TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~140~~ 177.

THE INDIANA MANUFACTURING COMPANY, APPELLANT,

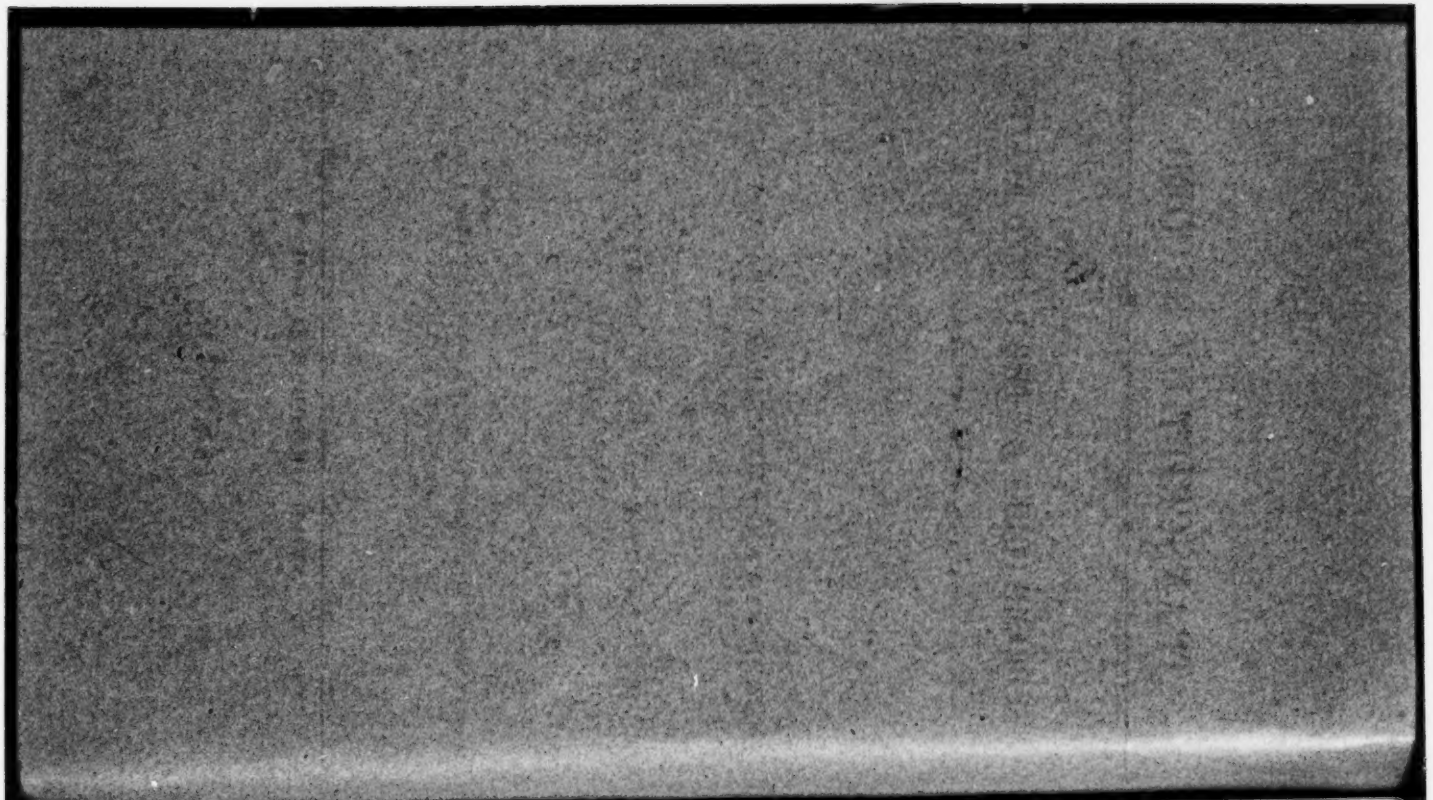
vs.

ARMIN C. KOEHNE, JOSEPH E. BOSWELL, HARRY B. SMITH, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

FILED OCTOBER 21, 1901.

(18,293.)



(18,293.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 440.

THE INDIANA MANUFACTURING COMPANY, APPELLANT,

vs.

ARMIN C. KOEHNE, JOSEPH E. BOSWELL, HARRY B. SMITH, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 1, 1901.

1 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in the district of Indiana, on the first Tuesday of May, in the year of our Lord one thousand nine hundred and one, before Honorable John H. Baker, judge of the district court of the United States for the district of Indiana, and *ex officio* judge of said circuit court.

THE INDIANA MANUFACTURING COMPANY, Complainant, *vs.* ARMIN C. KOEHNE, JOSEPH E. BOSWELL, Harry B. Smith, Thomas Madden, William Pollard, Eugene Sauley, William H. Schmidt, Sterling R. Holt, Victor M. Backus, Joel A. Baker, Thomas Taggart, Hiram Miller, Albert Sahm, Sylvester Johnson, William A. Bell, Charles H. Stuckmeyer, George Wolf, James A. Mount, Union B. Hunt, William H. Hart, John C. Wingate, Thomas B. Buskirk, William D. Owen, Americus C. Daily, and Ivan N. Walker.	No. 9895.	Chancery.

Be it remembered that heretofore, to wit, at the May term of said court, on the 28th day of June, 1900, before Honorable John H. Baker, judge of said court, the following proceedings in the above-entitled cause were had, to wit:

Comes now the complainant by Chester Bradford, Esq., its solicitor, and files its bill of complaint in the above-entitled cause, in the words following, to wit:

To the honorable judges of the circuit court of the United States for the district of Indiana:

Your orator, The Indiana Manufacturing Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Indiana, and having its principal office and place of business at the city of Indianapolis, in said State, brings this bill into this court against Armin C. Koehne, who is treasurer and a member of the board of review of Marion county, Indiana, residing at Indianapolis, in said county, individually and as such officer; Joseph E. Boswell, who is assessor, and a member of the board of review of Marion county, Indiana, residing in In-
2 dianapolis, in said county, individually and as such officer; Harry B. Smith, who is auditor, and a member of the board of review of Marion county, Indiana, residing in Indianapolis, in said county, individually and as such officer; Thomas Madden, who is a member of the board of review of Marion county, Indiana, residing in Indianapolis, in said county, individually and as such officer; William Pollard who is a member of the board of review of Marion

county, Indiana, residing in New Augusta in said county, individually and as such officer; Eugene Saulcy, who is assessor of Center township in Marion county, Indiana, and who resides in Indianapolis, in said county, individually and as such officer; William H. Schmidt, who was formerly treasurer and a member of the board of review of Marion county, Indiana, residing in Indianapolis, in said county; Sterling R. Holt, who was formerly treasurer and a member of the board of review of Marion county, Indiana, residing in Indianapolis, in said county; Victor M. Backus, who was formerly treasurer and a member of the board of review of Marion county, Indiana, residing in Indianapolis, in said county; Joel A. Baker, who was formerly assessor and a member of the board of review of Marion county, Indiana, residing in Indianapolis in said county; Thomas Taggart, who was formerly auditor and a member of the board of review of Marion county, Indiana, residing in Indianapolis in said county; Hiram Miller, who was formerly a member of the board of review of Marion county, Indiana, residing at Flackville in said county; Albert Sahm, who was formerly a member of the board of review of Marion county, Indiana, residing at Indianapolis in said county; Sylvester Johnson, who was formerly a member of the board of review of Marion county, Indiana, residing at Irvington in said county; William A. Bell, who was formerly a member of the board of review of Marion county, Indiana, residing in Indianapolis in said county; Charles H. Stuckmeyer, who was formerly a member of the board of review of Marion county, Indiana, residing in Indianapolis in said county; George Wolf, who was formerly assessor of Center township, in Marion county, Indiana, residing in Indianapolis in said county; James A. Mount, a member of the State board of tax commissioners of the State of Indiana, residing in Indianapolis in said State, individually and as such officer; Union B. Hunt, a member of the State board of tax commissioners of the State of Indiana, residing in Indianapolis in said State, individually and as such officer; William H. Hart, a member of the State board of tax commissioners of the State of Indiana, residing in Indianapolis in said State, individually and as such officer; John C. Wingate, a member of the State board of tax commissioners of the State of Indiana, residing in Wingate in said State, individually and as such officer; Thomas B. Buskirk, a member of the State board of tax commissioners of the State of Indiana, residing in Paoli, in said State, individually and as such officer; William D. Owen, formerly a member of the State board of tax commissioners of the State of Indiana, residing at Indianapolis in said State; Americus C. Daily, formerly a member of the State board of tax commissioners of the State of Indiana, residing in Lebanon in said State, and Ivan N. Walker, formerly a member of the State board of tax commissioners of the State of Indiana, residing in Indianapolis in said State; and all of whom are citizens of the State of Indiana and of the United States.

And thereupon your orator complains and says that it is a private corporation organized and existing under the laws of the State of

Indiana in such cases made and provided governing the incorporation of manufacturing and mining companies in said State; that it was organized on or about February 11, 1891, with a nominal capital stock of the sum of $200,000, for the purpose of manufacturing, introducing, selling, and using a certain invention known as a "pneumatic straw-stacker," the machine or apparatus of which is manufactured, sold or used under letters patent of the United States, granted upon said invention under the authority of the Constitution and laws of the United States; that at the time of the incorporation of your orator certain interests in said letters patent were assigned to it for and in consideration of the whole amount of its capital stock, and that such interests in said letters patent became and were its entire capital stock, no portion of which was ever paid in in money or other property; that thereafter, to wit, on or about March 3,

4 1893, your orator's capital stock was increased, under and by virtue of the provisions of the statutes of the State of Indiana in such cases made and provided, from the sum of $200,000 to the sum of $360,000, and that thereupon certain other interests in letters patent of the United States were assigned to it for and in consideration of the whole of such increased amount of its capital stock, and that such interests in said letters patent became and were the whole amount of such increased capital stock, no portion of which was ever paid in in money or other property; that your orator has not now and never has had any other or different capital stock than that herein described; so that the entire value of the capital stock of your orator consists and always has consisted wholly of letters patent of the United States, and neither includes nor represents any other matter or thing of value whatsoever.

Your orator further shows unto your honors that the State of Indiana has enacted and is attempting to enforce certain statutes requiring the taxation of "patent rights" or letters patent of the United States, the provisions of said statutes in question being comprised in the act of the General Assembly of the State of Indiana, approved March 6, 1891, which by section 50 requires that

"Every person required by this act to make or deliver such statement or schedule shall set forth an account of property held or owned by him, as follows:

* * * * * * *

"Seventh. All patent rights describing them, and giving the number of each patent, and the value of each."

and which in section 53 has prescribed and enacted a form of "schedule" which all property-owners are required to follow in returning their property for taxation, in and by which said schedule the "number of patent rights and value" are required to be returned for taxation in common with other personal property. And your orator says that the said statutes of the State of Indiana requiring the taxation of "patent rights" or letters patent so as aforesaid are in contravention of the Constitution and laws of the United States, and are unconstitutional, invalid, and void.

5 Your orator further shows unto your honors that at the time for assessing taxes for the year 1893 it had and was possessed of taxable property and assets to the amount of $8,900, and no more, and that it made due return of the same for taxation, upon and by means of the regular blank statements for taxation and assessment-lists furnished for that purpose by the tax assessors, in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said tax statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the said assessment-list, in accordance with the above-described unconstitutional, invalid and void enactment of the State of Indiana, provided for and required the return for taxation of the letters patent of the United States owned by your orator, which said assessment-list was required to be filled out by the said assessor, and which said assessment-list was made to show and does show that your orator was at that time possessed of four letters patent of the United States of the value of $25,000; but your orator denies that by the making of the return as aforesaid it admitted or agreed to the legality of assessing letters patent for taxation, or the validity or propriety of such assessment; and it now avers that it denies and always has denied the validity or legality of such or any assessment for taxation on account of or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

Your orator further shows unto your honors that the board of review of Marion county, Indiana, then composed of the defendants Joel A. Baker, Thomas Taggart and Victor M. Backus, did inequitably, wrongfully, unjustly, unlawfully and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1893, because of your orator's ownership of said letters patent as aforesaid, and because of the value of the stock of your orator solely consisting in and derived from such ownership of said letters patent as aforesaid, and in supposed
6 compliance with the above-described unconstitutional, invalid and void statute of the State of Indiana, at the sum of $36,000, or $27,100 more than your orator was possessed of in taxable property, or was properly or justly assessable for, all in violation of the Constitution and laws of the United States, under and by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that it has paid as taxes for the year 1893 the sum of $204.55 to one Sterling R. Holt who at the date of such payment was the treasurer of Marion county, Indiana, and received an official receipt therefor from the said Sterling R. Holt; which said sum of $204.55 is in full of all taxes with penalties, interest and costs thereon which were justly and lawfully chargeable to your orator for the said year 1893, and is in full of all taxes levied or assessed upon all and singular its

property and assets of every description saving and excepting only the letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Armin C. Koehne as treasurer as aforesaid, are, in compliance with the supposed duty devolving on them under the unconstitutional, invalid and void statutes of the State of Indiana requiring such taxation, demanding a further large sum, to wit, the sum of $389.85 as unpaid taxes for the said year 1893, basing said demand upon the valuation of the letters patent of the United States owned or held by your orator as above set forth, or upon the capital stock of your orator, which consists entirely of or solely represents the said letters patent as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes so wrongfully, unlawfully, and unjustly demanded; all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

7 And your orator further shows unto your honors that at the time for assessing taxes for the year 1894 it had and was possessed of taxable property and assets to the amount of $7,645, and no more, and that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment-lists furnished for that purpose by the tax assessors in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the said assessment-list, in accordance with the above-described unconstitutional, invalid and void enactment of the State of Indiana, provided for and required the return for taxation of the letters patent of the United States owned by your orator, which said assessment-list was required to be filled out by the said assessor, and which said assessment-list was made to show and does show that your orator was at that time possessed of four letters patent of the United States of the value of $25,000; but your orator denies that by the making of the return as aforesaid it admitted or agreed to the legality of assessing letters patent for taxation or the validity or propriety of such assessment; and it now avers that it denies and always has denied the validity or legality of such or any assessment for taxation on account of, or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

Your orator further shows unto your honors that the board of review of Marion county, Indiana, then composed of the defendants, Joel A. Baker, Thomas Taggart, Sterling R. Holt, William A. Bell, and Charles H. Stuckmeyer, did inequitably, wrongfully, unjustly, unlawfully and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1894, because of your orator's ownership of said letters patent, as

aforesaid, and because of the value of the stock of your orator
8 solely consisting in and derived from such ownership of said letters patent as aforesaid, and in supposed compliance with the above-described unconstitutional, invalid, and void statute of the State of Indiana, at the sum of $36,000, or $28,355 more than your orator was possessed of in taxable property, or was properly or justly assessable for, all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that it has paid as taxes for the year 1894 the sum of $182.60 to the defendant Sterling R. Holt, who at the date of such payment was the treasurer of Marion county, Indiana, and received an official receipt therefor from the said Sterling R. Holt; which said sum of $182.60 is in full of all taxes which were justly and lawfully chargeable to your orator for the said year 1894, and is in full of all taxes levied and assessed upon all and singular its property and assets of every description saving and excepting only the said letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Armin C. Koehne, as treasurer, as aforesaid, are, in compliance with the supposed duty devolving upon them under the unconstitutional, invalid, and void statutes of the State of Indiana requiring such taxation, demanding a further large sum, to wit, $481.40, as unpaid taxes for the said year 1894, basing said demand upon the valuation of the letters patent of the United States owned or held by your orator as above set forth, or upon the capital stock of your orator, which consists entirely of or solely represents the letters patent as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes of your orator so wrongfully, unlawfully, and unjustly demanded; all in violation of the Constitution and laws of the United States under and by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

9 And your orator further shows unto your honors that at the time for assessing taxes for the year 1895 it had and was possessed of taxable property and assets to the amount of $10,137, and no more, and that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment-lists furnished for that purpose by the tax assessors in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the tax assessor demanded of your orator that the number and value of the letters patent owned by your orator should be furnished to be placed upon said assessment-list, which said demand your orator refused to submit to, but instead entered and placed

upon said assessment-list as an answer to the question "Number of patent rights and value," the statement, "We are advised that patent rights are not taxable, and therefore decline to state any value for them;" and that thereafter the said assessor, endeavoring to comply with and carry out the above-described unconstitutional, invalid and void enactment of the State of Indiana, made and attached to said assessment-list a statement saying "Number 30. Returned by deputy assessor in 1894. No. patent rights and value, 4, $25,000. John W. McDonald"—the said John W. McDonald being at that time the chief deputy of the defendant George Wolf, then the tax assessor of Center township, in Marion county, Indiana, as aforesaid. That in the said statement for taxation for the said year 1895 in response to the inquiry "Amount of capital stock authorized" answered "$360,000.00;" and in response to the inquiry "Market value of the shares of stock" answered "Don't know;" and in response to the inquiry "If no market value, then the actual value" answered "The entire capital stock was issued in exchange for certain patent rights or letters patent and has no value except such as it derives from such patent rights. The tangible property of the corporation is not sufficient to meet its indebtedness;" and in response to the inquiry "Personal property within the State" answered "$10,137.00." In and by said statement for taxation also it showed that its indebtedness was $39,863 more than its tangible or taxable property. And your orator avers that it then denied the validity or legality of such or any assessment for taxation on account of or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

Your orator further shows unto your honors that the board of review of Marion county, Indiana, then composed of the defendants Joel A. Baker, Thomas Taggart, Sterling R. Holt, William A. Bell, and Charles H. Stuckmeyer, did inequitably, wrongfully, unjustly unlawfully and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1895 because of your orator's ownership of said letters patent, as aforesaid, and because of the value of the stock of your orator solely consisting in and derived from such ownership of said letters patent as aforesaid, and in supposed compliance with the above-described unconstitutional, invalid and void statute of the State of Indiana, at the sum of $36,000, or $25,863 more than your orator was possessed of in taxable property, or was properly or justly assessable for, all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that it has paid as taxes for the year 1895 the sum of $167.33 to the defendant, Sterling R. Holt, who at the date of such payment was the treasurer of Marion county, Indiana, and received an official receipt therefor

from the said Sterling R. Holt, which said sum of $167.23 is in full of all taxes which are justly and lawfully chargeable to your orator for the said year 1895, and is in full of all taxes levied and assessed upon all and singular its property and assets of every description saving and excepting only the said letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Armin C. Koehne, as treasurer, as aforesaid, are, in compliance with the supposed duty devolving upon them under the unconstitutional, invalid and void statutes of the State of Indiana requiring such taxation, demanding a further large sum, to wit, the sum of $495.04 as unpaid taxes for the said year 1895, basing said demand upon the valuation of the letters patent of the United States owned or held by your orator as above set forth, or upon the capital stock of your orator, which consists entirely of or solely represents the letters patent of the United States as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes of your orator so wrongfully, unlawfully and unjustly demanded; all in violation of the Constitution and laws of the United States under and by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

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And your orator further shows unto your honors that at the time of assessing taxes for the year 1896 it had and was possessed of taxable property and assets to the amount of $6,972, and no more, and that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment furnished for that purpose by the tax assessors, in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the said assessment-list in and by item No. "30," in conformity with the above-described unconstitutional, invalid and void statute of the State of Indiana, required the "number of patent rights and value" owned by your orator to be returned for taxation, but your orator declined to so return the same, and entered as the answer to said item the words "Not taxable." That in the said statement for taxation in response to the inquiry "Amount of capital stock paid up" your orator answered "By the purchase of patent rights, $360,000;" and in response to the inquiry "Market value of the shares of stock" answered "Know of none on the market;" and in response to the inquiry "If no market value then the actual value" answered "The actual value is problematical, and depends wholly upon the value of letters patent owned by the company and for the purchase of which its entire capital stock was issued;" and in response to the inquiry "Personal property within the State" answered "$6,972.00;" and in response to the inquiry "The name and value of each franchise or privilege owned or enjoyed by such corporation" answered "This company has no taxable property whatsoever beyond the $6,972 above stated. Its sole other possessions consist of letters pat-

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ent of the United States, which are not taxable." And your orator avers that it then denied, and now denies, and has always denied the validity or legality of any assessment for taxation on account of or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

Your orator further shows unto your honors that the board of review of Marion county, Indiana, then composed of the defendants Joel A. Baker, Harry B. Smith, William H. Schmidt, William A. Bell and Hiram Miller, did inequitably, wrongfully, unjustly, unlawfully and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1896, because of your orator's ownership of said letters patent as aforesaid, and because of the value of the stock of your orator solely consisting in and derived from such ownership of said letters patent as aforesaid, in supposed compliance with the above-described unconstitutional, invalid and void statute of the State of Indiana, at the sum of $180,000, or $173,026 more than your orator was possessed of in taxable property or was properly or justly assessable for, all in violation of the Constitution and laws of the United States under and
13 by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that it has paid as taxes for the year 1896 the sum of $115.04 to the defendant William H. Schmidt, who at the date of such payment was the treasurer of Marion county, Indiana, and received an official receipt therefor from the said William H. Schmidt, which sum of $115.04 is in full of all taxes which were justly and lawfully chargeable to your orator for the said year 1896, and is in full of all taxes levied and assessed upon all and singular its property and assets of every description saving and excepting only the said letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Armin C. Koehne, as treasurer, as aforesaid, are, in compliance with the supposed duty devolving upon them under the unconstitutional, invalid and void statutes of the State of Indiana requiring such taxation, demanding a further large sum, to wit, the sum of $3,556.96 as unpaid taxes for the said year 1896, basing said demand upon the valuation of the letters patent of the United States owned or held by your orator as above set forth, or upon the capital stock of your orator, which consists entirely of or solely represents the letters patent of the United States as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes of your orator so wrongfully, unlawfully and unjustly demanded; all in violation of the Constitution and laws of the United States under and by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

14 And your orator further shows unto your honors that at the time of assessing taxes for the year 1897 it had and was possessed of taxable property and assets to the amount of $6,544, and no more, and that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment furnished for that purpose by the tax assessors, in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the said assessment-list in and by item No. "33," in conformity with the above-described unconstitutional, invalid and void statute of the State of Indiana, required the "number of patent rights and value" owned by your orator to be returned for taxation, but your orator declined to so return the same, and entered as the answer to said item the words "Not taxable." That in the said statement for taxation in response to the inquiry "Amount of capital stock paid up" your orator answered "By the purchase of patent rights, $360,000;" and in response to the inquiry "Market value of the shares of stock" answered "Know of none on the market;" and in response to the inquiry "If no market value then the actual value" answered "The actual value is problematical, and depends wholly upon the value of letters patent owned by the company and for the purchase of which its entire capital stock was issued;" and in response to the inquiry "Personal property within the State" answered "$6,544.00;" and in response to the inquiry "The name and value of each franchise or privilege owned or enjoyed by such corporation" answered "This company has no taxable property whatsoever beyond the $6,544 above stated. Its sole other possessions consist of letters patent of the United States, which are not taxable." And your orator avers that it then denied, and now denies, and has always denied the validity or legality of any assessment for taxation on account of or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

15 Your orator further shows unto your honors that the board of review of Marion county, Indiana, then composed of the defendants Joseph E. Boswell, Harry B. Smith, William H. Schmidt, William A. Bell, and Sylvester Johnson, accepted your orator's return as correct, and fixed the assessment of your orator's property for purposes of taxation for the said year 1897 at the sum of $6,435.

And your orator further shows unto your honors that one Merrill Moores, who described himself as a citizen of Marion county, Indiana, took an appeal from the said assessment to the State board of tax commissioners of the State of Indiana, then composed of the defendants James A. Mount, William D. Owen, Americus C. Daily, Ivan N. Walker, and Thomas B. Buskirk, who upon such appeal did inequitably, wrongfully, unjustly, unlawfully and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1897 because of your orator's ownership of said letters patent as aforesaid, and because of the

value of the stock of your orator solely consisting in and derived from such ownership of said letters patent, as aforesaid, and in supposed compliance with the above-described unconstitutional, invalid and void statute of the State of Indiana, at the sum of $500,000, or $493,436 more than your orator was possessed of in taxable property or was properly or justly assessable for, all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent were issued and are held by your orator, and in defiance of the rights of your orator in the premises, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that it has paid as taxes for the said year 1897 the sum of $111.33 to the defendant William H. Schmidt, who at the date of such payment was treasurer of Marion county, Indiana, and received an official receipt therefor from the said William H. Schmidt, which said sum of $111.33 is in full of all taxes which were justly and lawfully chargeable to your orator for the said year 1897, and is in full of all taxes
16 levied and assessed upon all and singular its property and assets of every description for the said year 1897 saving and excepting only the said letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Armin C. Koehne, as treasurer, as aforesaid, are, in compliance with the supposed duty devolving upon them under the unconstitutional, invalid and void statutes of the State of Indiana requiring such taxation, demanding a further large sum, to wit, the sum of $8,538.67 as unpaid taxes for the said year 1897, basing said demand upon the valuation of the letters patent of the United States owned or held by your orator as above set forth, or upon the capital stock of your orator, which consists entirely of or solely represents the letters patent of the United States as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes of your orator so wrongfully, unlawfully and unjustly demanded; all in violation of the Constitution and laws of the United States under and by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

And your orator further shows unto your honors that at the time of assessing taxes for the year 1898 it had and was possessed of taxable property and assets to the amount of $15,962.53 and no more, and that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment furnished for that purpose by the tax assessors, in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the said assessment-list in and by item No. "29" required "every franchise and description and value" owned by your orator to be returned for taxation, and your orator entered as its answer to said item
17 the words "We have several letters patent of the United States, which however are not taxable," thus showing clearly

the nature of its said property. That in the said statement for taxation in response to the inquiry "Amount of capital stock paid up" your orator returned the answer "By the purchase of patent rights, $360,000;" and in response to the inquiry "Market value of the shares of stock" answered "Know of none on the market;" and in response to the inquiry "If no market value then the actual value" answered "The actual value is problematical, and depends wholly upon the value of letters patent owned by the company and for the purchase of which its entire capital stock was issued;" and in response to the inquiry "Personal property within the State" answered "$15,962.53;" and in response to the inquiry "The name and value of each franchise or privilege owned or enjoyed by such corporation" answered "This company has no taxable property whatsoever beyond the $15,962.53 above stated. Its sole other possessions consist of letters patent of the United States, which are not taxable." And your orator avers that it then denied, and now denies, and has always denied the validity or legality of any assessment for taxation on account of or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

Your orator further shows unto your honors that the board of review of Marion county, Indiana, then composed of the defendants Joseph E. Boswell, Harry B. Smith, William H. Schmidt, Albert Sahm, and William Pollard, accepted your orator's return as correct, and fixed the assessment of your orator's property for purposes of taxation for the said year 1898 at the said sum of $15,962.53.

And your orator further shows unto your honors that one Merrill Moores, who described himself as a citizen of Marion county, Indiana, took an appeal from the said assessment to the State board of tax commissioners of the State of Indiana, then composed of the defendants James A. Mount, William D. Owen, Americus C. Daily, Ivan N. Walker, and Thomas B. Buskirk, who upon such ap-

18 peal did inequitably, wrongfully, unjustly, unlawfully, and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1898, because of your orator's ownership of said letters patent as aforesaid, and because of the value of the stock of your orator, solely consisting in and derived from such ownership of said letters patent as aforesaid, and in supposed compliance with the above-described unconstitutional, invalid and void statute of the State of Indiana, at the sum of $500,000, or $484,037.47 more than your orator was possessed of in taxable property, or was properly or justly assessable for, all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent were issued and are held by your orator, and in defiance of the rights of your orator in the premises, and to the great and manifest wrong and injury of your orator.

Your orator further shows unto your honors that it has paid as taxes for the said year 1898 the sum of $295.35 to one William H.

Schmidt, who at the date of such payment was treasurer of Marion county, Indiana, and received an official receipt therefor from the said William H. Schmidt, which said sum of $295.35 is in full of all taxes which were justly and lawfully chargeable to your orator for the said year 1898, and is in full of all taxes levied and assessed upon all and singular its property and assets of every description saving and excepting only the said letters patent of the United States. Notwithstanding which the said defendants, and particularly the said defendant Armin C. Koehne, as treasurer, as aforesaid, are, in compliance with the supposed duty devolving upon them under the unconstitutional, invalid and void statutes of the State of Indiana requiring such taxation, demanding a further large sum, to wit, the sum of $8,954.65 as unpaid taxes for the said year 1898, basing said demand upon the valuation of the letters patent of the United States owned or held by your orator as above set forth, or upon the capital stock of your orator, which consists entirely of or solely represents the letters patent of the
19 United States as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes of your orator so wrongfully, unlawfully and unjustly demanded; all in violation of the Constitution and laws of the United States under and by virtue of which said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

NOTE.—An amendment was made to this bill January 21, 1901, to be inserted at this point. See pp. 28–30 *post* for said amendment

Your orator further shows unto your honors that the returns for taxation made by it in the said several years 1893, 1894, 1895, 1896, 1897 and 1898, and each and every of them, contained full and complete statements of your orator's property, and that all such property and assets without exception or reservation were fully and completely returned at their full cash value, except in so far as your orator declined to return its letters patent for taxation. That in so far as your orator's capital stock had or has any value whatever, it was and is solely and exclusively derived from its letters patent as aforesaid and not otherwise. That your orator has not now and never has had any property or assets of any description saving and excepting only the said letters patent which could lend or impart any value to its capital stock. That your orator's indebtedness is now and always has been an amount largely in excess of the value of all its property and assets of every description saving and excepting only its letters patent. That except for its ownership of said letters patent your orator would now be and would always have been insolvent, and its capital stock worthless. That no money or property, of any character or description, was ever paid in to your orator, as, for, or on account of its capital stock, saving and excepting only its said letters patent. And your orator further charges and avers that these facts are now and always have been well known to the defendants, who, nevertheless, having heard that your

orator was in receipt of a large income from its said patents, and that its stock was for that reason regarded as of large value by the owners thereof, without right or authority, and in usurpation of powers whereof they were not possessed, have exercised or pre-
20 tended to exercise the sheerly capricious right to tax the letters patent owned by your orator under the guise and pretext of taxing your orator's capital stock, which, as defendants at the time well knew had no value whatever except as it represented, was derived from or consisted in your orator's said patents. And your orator avers that the assessment for taxation so as aforesaid made in each of said years was, except as to the value returned by your orator in each of said years other than said letters patent, based solely and exclusively upon the value as estimated by said county board of review and said State board of tax commissioners of said letters patent and of said capital stock as derived from said letters patent, and not upon any other or different value or property. All to the great and manifest wrong, damage and injury of your orator, and in defiance of your orator's rights in the premises, and in violation of the Constitution and laws of the United States.

Your orator further shows unto your honors that all taxes justly and legally due from your orator prior to those assessed in and for the year 1899 have been fully paid, as hereinbefore set forth, and that the taxes for the year 1899 are not yet due.

Your orator further shows unto your honors that at the times of paying the said taxes as aforesaid for the years 1893, 1894, 1895, 1896, 1897, and 1898, your orator did solemnly and formally protest against the unjust, inequitable, unlawful and wrongful assessment herein elsewhere complained of, and did make such payment as and for the full amount of all taxes lawfully, justly or properly chargeable or assessable to your orator.

Your orator further shows unto your honors that the originals of the above-described assessment-lists and statements for taxation, together with the tax duplicates upon which the assessments complained of are entered, are on file in the offices of the defendants herein, in the court-house of Marion county in the city of Indian-
apolis, in the State of Indiana, within the jurisdiction of this
21 court, and in the official custody of such of the defendants herein as usually have custody thereof in their respective capacities as public officers as above set forth.

And your orator further shows unto your honors that the defendant Armin C. Koehne is the treasurer of Marion county, Indiana, whose duty it is as such treasurer, under the laws of the State of Indiana, to receive and collect taxes for the said State of Indiana, and also for Marion county in said State, and also for the city of Indianapolis within said county, and also for the school board of the city of Indianapolis, Indiana. That a large proportion of the amounts received and collected by the said defendant as treasurer, as aforesaid, are for and on account of and for the benefit of the State of Indiana, a sovereign State, and one of the United States, and that under the Constitution and laws no suit can be maintained against the State of Indiana. That it is a part of the duty of the

said defendant Armin C. Koehne, as aforesaid, to pay over into the treasury of the State of Indiana a large proportion of the amounts so received and collected by him as taxes, and, therefore, that if said amounts are so collected and received and paid over, they will become mixed with the moneys of the said State, and thus be beyond reach of any process of this or any court, and irrecoverable, and that great and irreparable injury will result to your orator if such unlawful collection and paying over as aforesaid be not prevented. Further that were it possible to recover such moneys after payment a multiplicity of suits would be necessary.

And your orator further shows unto your honors that taxes amounting as aforesaid to a much larger amount than the amounts so paid for the years 1893, 1894, 1895, 1896, 1897 and 1898, have been pretended to be assessed against your orator upon the assessment and valuation of its property and assets, by reason of the inclusion therein of its letters patent of the United States as aforesaid, and so inequitably, wrongfully, unjustly, unlawfully and injuriously placed upon the property and assets of your orator, and that
22 said pretended taxes have been extended upon the tax duplicates of Marion county, Indiana, as aforesaid, and that such tax duplicates are now in the hands of the said defendant Armin C. Koehne as such treasurer, and that the said defendants, and particularly the said defendant Armin C. Koehne, are claiming and asserting that the said several sums so extended on the said duplicates are delinquent taxes against your orator and its property under the provisions of the statutes of the State of Indiana under which they pretend to be acting, and that said defendants in their official capacities are threatening and intend to and will in supposed compliance with the requirements of the provisions of the aforesaid unconstitutional, invalid, and void statutes of the State of Indiana requiring such taxation levy upon the property of your orator, and will proceed to sell and distrain the same to pay and satisfy said sums so claimed to be due and delinquent, if not enjoined from so doing; and that said defendants are threatening to collect such wrongful, unjust, illegal, and void taxes by distraint and sale of the property of your orator, to the great and irreparable injury of your orator.

Your orator further shows unto your honors that notwithstanding the payments aforesaid of all the taxes justly and equitably due from your orator for the years 1893, 1894, 1895, 1896, 1897, and 1898, as hereinbefore set forth, the said defendants, and particularly the defendant Armin C. Koehne, as treasurer of Marion county, Indiana, as aforesaid, is claiming and asserting the right to enforce the payments of the entire taxes as extended upon his duplicates upon the said wrongful, unjust, unlawful, and void assessment and valuation of the property of your orator, including its said letters patent as aforesaid, made by said board of review, and by said State board of tax commissioners, and will, unless restrained and enjoined by a decree of this court, attempt to enforce payment of said wrongful, unjust and unlawful taxes by distraint and sale of the property of your orator, to its great and irreparable wrong and injury.

23 Your orator further shows unto your honors that said wrongful, unjust, inequitable, unlawful and void taxation, extended and entered upon said tax duplicates because of the aforesaid unjust, inequitable, unlawful and void assessment and valuation made by the said board of review, and said State board of tax commissioners, constitutes and is a cloud upon the title to the property of your orator, which a court of equity has full power and jurisdiction to remove by its decree.

Your orator further shows unto your honors that this is a suit arising under the Constitution and laws of the United States, and that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars—the total sum involved being upwards of twenty thousand dollars, as above set forth.

And forasmuch as your orator has no adequate relief except in this court, to the end that the defendants may if they can show reason why your orator should not have the relief hereby prayed, and may, but without oath, which is hereby expressly waived, full, true, direct and perfect answer make to the matters herein stated and charged, and that defendants may answer the premises, and that they may be decreed and compelled to account for and pay over the damages which your orator has sustained or shall have sustained by reason thereof, and be restrained from any further violation of your orator's rights, your orator prays this honorable court to grant a writ of injunction perpetually enjoining and restraining said defendants, individually and as such officers, and each and every of them, and all their deputies, clerks, attorneys, agents and servants, and all persons acting by, through or under the authority of either of them, and their successors in office forever, from in anywise assessing or collecting, or in any manner attempting to assess or collect the said or any amounts claimed as taxes as aforesaid, or any or any part of said amounts, and entered or to be entered upon the tax duplicates in the custody of said defendants or any or either of them, or any other amounts which are or may be

24 claimed to be due as taxes directly or indirectly on account of the value of the said or any patents owned by your orator, or on account of the value of your orator's stock issued for, consisting of or representing such patents, or from entering or causing to be entered any such taxes upon any tax duplicates or other books or accounts for keeping an account of taxes, and your orator prays that a provisional or preliminary injunction be issued restraining the said defendants from levying upon, distraining, seizing, selling or in anywise interfering with the property of your orator pending this cause.

By reason of the facts and averments hereinbefore set forth your orator further prays that upon final hearing hereof it be adjudged and decreed that the said assessment and valuation for taxation of the letters patent of your orator made directly or indirectly by said defendants or either or any of them is wrongful, inequitable, unjust, unlawful and wholly void; also that the cloud placed upon the title of your orator's corporate property by reason of said wrongful, inequitable, unjust, unlawful and void assessment and valuation made by said defendants or either or any of them be removed; also that

all entries heretofore made on the tax duplicates or tax records in custody of the defendants or any or either of them concerning such unlawful taxation be canceled and expunged; also that the defendants by decree of this court may be compelled to account for and pay over to your orator the damages your orator has sustained or shall have sustained by reason of the aforesaid unlawful acts of the defendants; also, that your honors may proceed to assess, or cause to be assessed under your direction such damages; and also that the defendants be decreed to pay the costs of this suit, and that your orator may have such other and further relief as the equity of the case or the Constitution and laws of the United States may require and to this court may seem meet.

25 May it please your honors to grant unto your orator not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendants Armin C. Koehne, Joseph E. Boswell, Harry B. Smith, Thomas Madden, William Pollard, Eugene Sauley, William H. Schmidt, Sterling R. Holt, Victor M. Backus, Joel A. Baker, Thomas Taggart, Hiram Miller, Albert Sahm, Sylvester Johnson, William A. Bell, Charles H. Stuckmeyer, George Wolf, James A. Mount, Union B. Hunt, William H. Hart, John C. Wingate, Thomas B. Buskirk, William D. Owen, Americus C. Daily, and Ivan N. Walker, commanding them on a day certain therein to be named, and under a certain penalty to be and appear in this honorable court, then and there to answer all and singular the premises, and to stand and abide such further order, direction and decree as may be made against them.

And your orator will ever pray.

THE INDIANA MANUFACTURING COMPANY,
By ARTHUR A. McKAIN, *President.*

Attest: JOSEPH K. SHARPE, JR., *Secretary.*

CHESTER BRADFORD,
Solicitor and of Counsel for Complainant.
—— ——, *Of Counsel.*

26 STATE OF INDIANA, } ss:
County of Marion, }

Arthur A. McKain, being duly sworn, deposes and says, that he is the president of the corporation The Indiana Manufacturing Company, the complainant herein. That he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are shown to be on information and belief, and as to those matters he verily believes them to be true.

ARTHUR A. McKAIN.

Subscribed and sworn to before me, a notary public within and for said county and State, this 28th day of June, 1900.

JAMES A. WALSH,
Notary Public.

And afterwards, to wit, at the May term of said court, on the 17th day of July, 1900, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

27 This cause coming on to be further heard on the motion of complainant for an injunction against the defendants and each of them, *pendente lite*, and being argued by counsel and submitted for the consideration of the court, it is hereby ordered, adjudged and decreed by the court that the temporary restraining order heretofore granted be and the same is hereby dissolved as to each and all of the defendants save and except the defendant Armin C. Koehne, treasurer of Marion county, and that as to said defendant Koehne, treasurer as aforesaid, said restraining order be and the same is hereby continued in force, and he, and his deputies, clerks, attorneys, agents and servants and all persons acting by, through or under his authority be and they are hereby restrained and enjoined from assessing, levying upon, distraining, seizing, selling or in anywise interfering with the property of the complainant until the final determination of this cause or the further order of the court.

And afterwards, to wit, at the November term of said court, on the 21st day of January, 1901, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant by Chester Bradford, Esq., its solicitor, and files its amendment to the bill herein, in the words following to wit:

28 In the United States Circuit Court for the District of Indiana.

THE INDIANA MANUFACTURING COMPANY
vs.
ARMIN C. KOEHNE ET AL. } No. 9895. In Equity.

Amendment to Bill of Complaint.

The complainant herein, by leave of court first had and obtained, hereby withdraws the amendment to its bill of complaint heretofore filed herein, July 13, 1900, and as a substitute for the said amendment, and by way of supplement and addition to its said bill of complaint, hereby amends the same by inserting therein between the seventh and eighth lines on page 19 thereof the following:

And your orator further shows unto your honors that at the time of assessing taxes for the year 1900 it had and was possessed of tax-

able property and assets to the amount of $3,503, and no more, and that it made due return of the same for taxation upon and by means of the regular blank statements for taxation and assessment-lists furnished for that purpose by the tax assessors, in accordance with the statutes of the State of Indiana in such cases made and provided, all as by a duly authenticated copy of said statement and of said assessment-list ready here in court to be produced whenever required will more fully and at large appear. That the said assessment-list in and by item No. "30," in conformity with the above-described unconstitutional, invalid and void statute of the State of Indiana, required the "number of patent rights and value" owned by your orator returned for taxation, but your orator declined to so return the same, and entered as the answer to said item the words "Our patent rights in our estimation are very valuable but are not taxable." That in the said statement for taxation in response to the inquiry "Amount of capital stock paid up" your orator answered "By the purchase of patent rights, $360,000;" and in response to the
29 inquiry "Market value of the shares of stock" answered "Know of none on the market;" and in response to the inquiry "If no market value then the actual value" answered "The actual value is problematical, and depends wholly upon the value of letters patent owned by the company and for the purchase of which its entire capital stock was issued;" and in response to the inquiry "Personal property within the State" answered "$3,503.00;" and in response to the inquiry "The name and value of each franchise or privilege owned or enjoyed by such corporation" answered "This company has no taxable property whatever beyond the $3,503 above stated. Its sole other possessions consists of letters patent of the United States, which are not taxable." And your orator avers that it then denied, and now denies, and has always denied the validity or legality of any assessment for taxation on account of or based directly or indirectly upon any letters patent owned or held by it, or upon the value of its capital stock which solely consists in and is derived from its letters patent as aforesaid.

And your orator further shows unto your honors that the defendants Armin C. Koehne, Joseph E. Boswell, Harry B. Smith, Thomas Madden and William Pollard, constitute the board of review of Marion county, Indiana, for the year 1900, and are the persons who are charged with the levying of taxes in said Marion county, Indiana. That there has been returned to the said defendants or some of them, to be placed upon the tax duplicates of Marion county, Indiana, the sum of $3,503, as aforesaid, which said sum your orator avers is the correct amount for which it should be assessed for taxation.

Your orator further shows unto your honors that the board of review of Marion county, Indiana, composed of the defendants Armin C. Koehne, Joseph E. Boswell, Harry B. Smith, Thomas Madden and William Pollard, did not disturb the amount returned by your orator, but without action thereon returned your orator's tax statement and assessment-list showing the value of its taxable

property to be the sum of $3,503, as aforesaid, to the tax assessor.

30 And your orator further shows unto your honors that one Allen Jennings, who described himself as a citizen of Marion county, Indiana, took an appeal in respect to the taxation of your orator for the year 1900 to the State board of tax commissioners of the State of Indiana, composed of the defendants James A. Mount, Union B. Hunt, William H. Hart, John C. Wingate, and Thomas B. Buskirk, who, upon such appeal, did, on or about August 13, 1900, and since the filing of the original bill of complaint herein, inequitably, wrongfully, unjustly, unlawfully and injuriously fix or pretend to fix the assessment of your orator's property for purposes of taxation for the said year 1900 because of your orator's ownership of said letters patent, and because of the value of the stock of your orator solely consisting in and derived from such ownership of such letters patent as aforesaid, and in supposed compliance with the above-described unconstitutional, invalid and void statute of the State of Indiana, at the sum of $360,000, or $356,497 more than your orator was possessed of in taxable property, or was properly or justly assessable for, all in violation of the Constitution and laws of the United States under and by virtue of which the said letters patent were issued and are held by your orator, and in defiance of your orator's rights in the premises, and to the great and manifest wrong and injury of your orator.

Your orator therefore prays that the above and foregoing may be incorporated in its said bill of complaint by way of amendment and supplement thereto, the transaction complained of having occurred since the filing of its original bill of complaint herein, and that your orator may have the same relief in respect to the said transaction as prayed for in respect to the corresponding transactions recited and complained of in its said original bill of complaint.

And your orator will ever pray.

THE INDIANA MANUFACTURING COMPANY,
By ARTHUR A. McKAIN, *Pres't.*

CHESTER BRADFORD, *Of Counsel.*

31 STATE OF INDIANA, *County of Marion,* } ss:

Arthur A. McKain, being duly sworn, deposes and says, that he is the president of the corporation The Indiana Manufacturing Company, the complainant herein. That he has read the foregoing amendment to bill of complaint, and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are shown to be on information and belief, and as to those matters he verily believes them to be true.

ARTHUR A. McKAIN.

Subscribed and sworn to before me, a notary public within and for said county and State, this 15th day of January, 1901.

[SEAL.] JAMES A. WALSH,
Notary Public.

And afterwards, to wit, at the May term of said court, on the 13th day of June, 1901, before the Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants Armin C. Koehne and Joseph E. Boswell by counsel, and by leave of court withdraw their demurrers heretofore filed herein, and each files his demurrer to the bill and amendment thereto, in the words following, to wit:

32 In the United States Circuit Court, District of Indiana.

INDIANA MANUFACTURING COMPANY, Complainant, v. ARMIN C. KOEHNE ET AL. } No. 9895. In Equity.

Demurrer of Armin C. Koehne, as Treasurer of Marion County, Indiana, to the Bill and Amendment of Complaint.

The defendant Armin C. Koehne, as treasurer of Marion county, Indiana, by protestation, not confessing or acknowledging any or all of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, demurs to the said bill and for cause of demurrer says:

(1.) That it appears upon the face of the bill that the complainant has an adequate remedy at law.

(2.) That the said complainant has not in or by *his* said bill or amendment made or stated such a cause as doth or ought to entitle it to any relief as is thereby sought or prayed for from or against this defendant.

(3.) That the value of the subject-matter of the plaintiff's action for the years 1893, 1894, and 1895, each separately, is beneath the dignity of this court, in that it does not show by the said bill or amendment that the matter in dispute for either of said years exceeds, exclusive of interest and costs, the sum of $2,000.

(4.) Because neither the said bill nor amendment shows on its face any diverse citizenship between the parties complainant and defendant.

(5.) Because neither the bill nor the supplemental bill shows on its face that the action is one arising under the Constitution or laws of the United States.

(6.) That it appears from said bill and amendment that this court has no jurisdiction to hear and determine this action.

(7.) That said bill of complaint and amendment is wholly without equity.

33 Wherefore and for divers other good causes of demurrer appearing in the said bill, this defendant demurs thereto and

humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to said bill and amendment, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

WM. L. TAYLOR,
MARTIN M. HUGG,
Solicitor- for Defendant.

DISTRICT OF INDIANA, }
County of Marion. }

Armin C. Koehne makes oath and says that he is the defendant in the above-entitled cause, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

ARMIN C. KOEHNE,
Treasure- Marion Co.

STATE OF INDIANA, }
Marion County. }

Subscribed and sworn to before me this 11th day of June, 1901.

FROST E. KING,
[SEAL.] *Notary Public.*

My commission expires Sep. 2–1902.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

WM. L. TAYLOR,
Solicitor for Defendants.

34 In the United States Circuit Court, District of Indiana.

INDIANA MANUFACTURING COMPANY, Complainant, } No. 9895. In
v. } Equity.
ARMIN C. KOEHNE ET AL. }

Demurrer of Joseph E. Boswell and Others to the Bill and Amendment of Complaint.

The defendants, Joseph E. Boswell, Harry B. Smith, Thomas Madden, William Pollard, Eugene Sauley, William H. Schmidt, Sterling R. Holt, Victor M. Backus, Joel A. Baker, Thomas Taggart, Hiram Miller, Albert Sahm, Sylvester Johnson, William A. Ball, Charles H. Stuckmeyer, George Wolf, James A. Mount, Union B. Hunt, William H. Hart, John C. Wingate, Thomas B. Buskirk, William D. Owen, Americus C. Daily and Ivan N. Walker, by protestation, not confessing or acknowledging any or all of the matter and things in said bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, demur to the said bill and for causes of demurrer say

(1.) That it appears upon the face of the bill that the complainant has an adequate remedy at law.

(2.) That the said complainant has not in or by *his* said bill of

amendment made or stated such a cause as doth or ought to entitle it to any relief as is thereby sought or prayed for from or against this defendant.

(3.) That the value of the subject-matter of the plaintiff's action for the years 1893, 1894 and 1895, each separately, is beneath the dignity of this court, in that it does not show by the said bill or amendment that the matter in dispute for either of said years exceeds, exclusive of interest and costs, the sum of $2,000.00.

(4.) Because neither the said bill nor amendment shows on its face any diverse citizenship between the parties complainant and defendant.

35 (5.) Because neither the bill nor the supplemental bill shows on its face that the action is one arising under the Constitution or laws of the United States.

(6.) That it appears from said bill and amendment that this court has no jurisdiction to hear and determine this action.

(7.) That said bill of complaint and amendment is wholly without equity.

Wherefore and for divers other good cause of demurrer appearing in the said bill, this defendant demurs thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to said bill and amendment, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

WM. L. TAYLOR,
MARTIN M. HUGG,
Solicitors for Defendants.

DISTRICT OF INDIANA, }
County of Marion. }

Harry B. Smith for himself and other named defendants makes oath that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

HARRY B. SMITH.

STATE OF INDIANA, }
Marion County, } ss:

Subscribed and sworn to before me this 11th day of June, 1901.

FROST E. KING,
Notary Public.

[SEAL.]

My commission expires Sep. 2, 1902.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

WM. L. TAYLOR,
Solicitor for Def'ts.

And afterwards, to wit, at the May term of said court, on the 25th day of September, 1901, before Honorable John H. Baker, judge of

said court, the following further proceedings in the above-
36 entitled cause were had, to wit:

This cause came on to be heard September 25, 1901, and was argued by counsel and briefs duly filed; and thereupon the court being sufficiently advised in the premises doth sustain the demurrer to the bill of complaint herein, and it is ordered, adjudged and decreed that the bill of complaint be and the same is hereby dismissed for want of equity at the costs of the complainant.

The court doth further order, adjudge and decree that the temporary restraining order heretofore issued in this cause shall be continued in force for the period of thirty days, and thereafter until the final disposition of the cause on appeal, if, within said period of thirty days the complainant shall duly perfect its appeal and give a good and sufficient appeal bond in the sum of twenty-five thousand dollars ($25,000); otherwise said restraining order shall stand dissolved at the end of said period of thirty days.

And afterwards, to wit, at the May term of said court, on the 11th day of October, 1901, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now the complainant by counsel, and files its prayer for appeal and assignment of errors herein in the words following, to wit:

37 In the United States Circuit Court for the District of Indiana.

THE INDIANA MANUFACTURING COMPANY
vs.
ARMIN C. KOEHNE ET AL. } No. 9895. In Equity.

Prayer of Appeal.

The above-named complainant, considering itself aggrieved by the decision and decree dated the 25th day of September, 1901, in the above-entitled cause, does hereby appeal from said decision and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith; and it prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decision and decree were made, duly authenticated, may be sent to the Supreme Court of the United States.

CHESTER BRADFORD,
Solicitor for Complainant.

Indianapolis, Indiana, October 9th, 1901.

The foregoing prayer of appeal is hereby allowed.
October 11, 1901.

JOHN H. BAKER, *Judge.*

38 In the United States Circuit Court for the District of Indiana.

THE INDIANA MANUFACTURING COMPANY
vs.
ARMIN C. KOEHNE ET AL. } No. 9895. In Equity.

Assignment of Errors.

Now comes The Indiana Manufacturing Company, the complainant in the above-entitled cause, and says that the decision and decree in said cause are erroneous and against the just rights of the said complainant; and it hereby assigns, as its reasons for appeal, errors of the court in said decision and decree contained, as follows, to wit:

First. That the court erred in holding that the complainant had an adequate remedy at law.

Second. That the court erred in holding that the complainant had a suitable and adequate remedy under the laws of the State of Indiana.

Third. That the court erred in holding that the bill of complaint herein is without equity.

Fourth. That the court erred in sustaining the demurrers of the defendants.

Fifth. That the court erred in not overruling the demurrers of the defendants.

Sixth. That the court erred generally in its decision and decree in this case, and particularly in this, in dismissing complainant's bill of complaint.

Wherefore, appellant prays that the said decision and decree be reversed, and the case remanded, with directions to the court below to overrule the demurrers of the defendants, and to enter a decree in favor of the complainant, and awarding relief in accordance with the prayer of its said bill of complaint.

CHESTER BRADFORD,
Solicitor and of Counsel for Complainant.

Indianapolis, Indiana, October 9th, 1901.

39 And said prayer for appeal is by the court now allowed, and thereupon the complainant files its appeal bond herein in the sum of $25.000.00, with Arthur A. McKain and Joseph K. Sharpe, Jr., as sureties thereon, which bond is now by the court approved, and is in the words following, to wit:

40 United States Supreme Court.

THE INDIANA MANUFACTURING COMPANY (a Corporation), Complainant,
vs.
ARMIN C. KOEHNE ET AL., Defendants.
No. 9895.

Know all men by these presents, that we The Indiana Manufacturing Company, a corporation organized under the laws of the State of Indiana, as principal, and Arthur A. McKain, and Joseph K. Sharpe, Jr. as sureties, are held and firmly bound unto the above-named Armin C. Koehne, Joseph E. Boswell, Harry B. Smith, Thomas Madden, William Pollard, Eugene Sauley, William H. Schmidt, Sterling R. Holt, Victor M. Backus, Joel A. Baker, Thomas Taggart, Hiram Miller, Albert Sahm, Sylvester Johnson, William A. Bell, Charles H. Stuckmeyer, George Wolf, James A. Mount, Union B. Hunt, William H. Hart, John C. Wingate, Thomas B. Buskirk, William D. Owen, Americus C. Daily and Ivan N. Walker, defendants, in the sum of twenty-five thousand dollars, ($25,000) to be paid to said defendants, to which payment, well and truly to be made, we bind ourselves jointly and severally, and our and each of our heirs, executors and administrators, jointly by the- presents.

Sealed with our seals and dated this 9th day of October 1901.

Whereas, the above-named The Indiana Manufacturing Company hath prosecuted an appeal to the Supreme Court of the United States, to reverse the decision and decree rendered in the above-entitled suit, by the circuit court of the United States for the district of Indiana: Now, therefore, the condition of this obligation is, that if the above-named The Indiana Manufacturing Company shall prosecute its said appeal to effect and answer all costs and damages that may be adjudged or awarded against it if it shall fail to make good its plea, then this obligation to be void; otherwise in full force.

THE INDIANA MANUFACTURING COMPANY,
By JOSEPH K. SHARPE, JR., *Secretary.*
ARTHUR A. McKAIN. [SEAL.]
JOSEPH K. SHARPE, JR. [SEAL.]

Sealed and delivered in presence of—
CHESTER BRADFORD.
LEWIS H. COLVIN.

Taken and approved by me this 11th day of October, 1901.
JOHN H. BAKER, *Judge.*

41 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United — for the district of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of the record in the

above-entitled cause as fully as the same appears of record and remains on file in my office.

Seal Circuit Court of the United States, District of Indiana.

Witness my hand and the seal of said court, at Indianapolis in said district this 16th day of October, 1901.

NOBLE C. BUTLER, *Clerk.*

The issuance and service of a citation herein is hereby waived.

WILLIAM L. TAYLOR,
Attorney General of Indiana, Solicitor for Appellees.

Endorsed on cover: File No. 18,293. Indiana C. C. U. S. Term No. 440. The Indiana Manufacturing Company, appellant, *vs.* Armin C. Koehne, Joseph E. Boswell, Harry B. Smith *et al.* Filed October 21st, 1901.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

INDIANA MANUFACTURING COMPANY,
Appellant,
v.
ARMIN C. KOEHNE, JOSEPH E. BOSWELL, HARRY B. SMITH, et al.,
Appellees.

No. 477
Appeal from the Circuit Court of the United States for the District of Indiana.

REPLY BRIEF IN SUPPORT OF MOTION TO AFFIRM THE RULING OF THE COURT.

WILLIAM F. McNAIR,
Attorney-General of Indiana,
Counsel for Appellees.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1901.

INDIANA MANUFACTURING COMPANY, *Appellant,* v. ARMIN C. KOEHNE, JOSEPH E. BOSWELL, HARRY B. SMITH, ET AL., *Appellees.*	No. 440. Appeal from the Circuit Court of the United States for the District of Indiana.

SEPARATE MOTION OF APPELLEES TO ADVANCE THE HEARING OF THIS CAUSE.

The appellees severally and separately move the court to advance the hearing of this cause.

The appellant filed a bill of complaint against the appellees in the circuit court of the United States for the District of Indiana, praying that the appellees be enjoined from assessing or collecting or in any manner attempting to assess or collect any of the taxes upon the capital stock of the appellant company, or from entering any of the assessments upon the tax duplicates in the custody of any of the appellees. To this bill demurrers were filed and after argument, were sustained

by the court. The appellant elected to stand upon its bill of complaint, has assigned error, and has appealed to this court.

The record shows the appellant to be a corporation organized under the laws of Indiana, having a capital stock of $360,000, par value; that the appellees are the tax officers of Marion county, Indiana, and also of the city of Indianapolis, and the state board of tax commissioners of the state of Indiana. They are all of the taxing officers who have had anything to do with the taxing of the property and capital stock of the appellant company. It involves the taxation of the property and capital stock of the company for all of the years since 1893.

Appellant contends that the entire value of the capital stock of the company consists, and always has consisted, wholly of letters patent of the United States, and neither includes nor represents any other thing or matter of value, and the said company refuses to pay any taxes upon the value of the capital stock of the company; but contends that it is liable to pay taxes upon the tangible personal property only of the company.

Something over $20,000 of taxes for the years since 1893 have been levied upon the capital stock of this company, and payment thereof has been refused and is involved in this case.

Furthermore, appellees contend, severally, that not only is that amount involved here, but a vast sum of taxes due from other corporations on the capital stock of their respective companies would escape taxation if

the principle contended for here by appellant should be sustained.

It is, therefore of great importance to the state that this case be decided and decided as speedily as possible. The question here involved has never before been decided by this court. This same question was presented to this court between these same parties, but was dismissed because the amount involved did not give the court jurisdiction of this cause.

See

Holt v. Indiana Manufacturing Company, 176 U. S., page 68.

For the reason, therefore, that the whole question of the taxation of the capital stock of corporations, where a part or all of the same has been given in exchange for patent rights, or invested in patent rights, is here involved; and for the further reason that vast sums of taxable property would go off the duplicate of Indiana, as well as of other states, if the contention of appellee is sustained in its full scope, as appellee believes, and for the reason that the taxes upon this corporation alone, aggregating something over $20,000 have been accumulating for eight years, and must await the decision of this case; which question is of vital interest to the state of Indiana, as well as other states, where the same question may be presented:

Therefore, these appellees most respectfully and urgently pray severally and separately that the hearing of the above entitled cause be advanced.

WILLIAM L. TAYLOR,
ATTORNEY-GENERAL OF INDIANA,
Solicitor for Appellees.

IN THE

Supreme Court of the United States.

On Appeal from the U. S. Circuit Court for the District of Indiana.

THE INDIANA MANUFACTURING COMPANY,
Appellant (Complainant below),
vs.
ARMIN C. KOEHNE, *et al.*,
Appellees (Defendants below.)

No. 177.
IN EQUITY.
October Term,
1902.

BRIEF FOR APPELLANT.

May it Please the Court:

The pages noted thus (p. ....) are those of the printed record. Quotations are indented.

The record in this case consists of the bill (pp. 1-16); the temporary injunction *pendente lite* (p. 18); an amendatory and supplemental bill bringing in the taxation made after the original bill was filed (pp. 18-20); demurrers by the defendants (pp. 21-23); the decree by the Court dismissing the bill for want of equity (p. 24); and the various papers necessary to the taking and perfecting of the appeal (pp. 24-26.)

STATEMENT OF THE CASE.

The broad and important question presented for decision is:

I. Are Letters Patent of the United States taxable under State or Municipal authority?

This question in this case will also be presented in the following form:

II. Is the stock of a corporation which consists wholly of Letters Patent of the United States, taxable as stated?

A second question raised here is:

III. Was such a suit as this maintainable in a United States Circuit Court, or should recourse have been had to the Courts of the State of Indiana?

Incidentally to this second question, we may be asked:

IV. Does the controversy, under the circumstances involved, present a case for equitable relief, or ought remedies to have been sought at law?

The court below filed no written opinion; but indicated, in announcing his decision orally, that on the *first* and *main* question his views were with the complainant, but on the *second* question he considered that the law was with the defendants, and therefore sustained the demurrers and dismissed the bill for want of equity. These questions will therefore be discussed in inverse order, as the questions of jurisdiction and procedure are first to be determined.

ASSIGNMENT OF ERRORS.

The following (p. 25) are the errors assigned:

First. That the court erred in holding that the complainant had an adequate remedy at law.

Second. That the court erred in holding that the complainant had a suitable and adequate remedy under the laws of the State of Indiana.

Third. That the court erred in holding that the bill of complaint herein is without equity.

Fourth. That the court erred in sustaining the demurrers of the defendants.

Fifth. That the court erred in not overruling the demurrers of the defendants.

Sixth. That the court erred generally in its decision and decree in this case, and particularly in this, in dismissing complainant's bill of complaint.

ARGUMENT.

III. Was such a suit as this mantainable in a United States Circuit Court, or should recourse have been had to the Courts of the State of Indiana?

The case is one arising "under the Constitution and Laws of the United States," so that a *federal question* is involved; and (p. 16) "the sum or value in dispute exceeds, exclusive of interests and costs, the sum or value of two thousand dollars."

The bill alleges, in effect, that the taxation in question was authorized and required by "certain statutes" or laws "of the State of Indiana," which laws are claimed to be "in contravention of the Constitution and Laws of the United States" (p. 3) and therefore void, because patent rights granted by the United States can not be subjected to State taxation.

It further appears that the obligation of the *contract* existing between the inventor and the general public is impaired by such taxation.

A party having a grievance of this character, involving a Federal question, has a right to go into a Federal Court for the purpose of having such question there determined, under the act of March 3, 1887, as corrected by the act of August 13, 1888, which act (second edition supplement to Revised Statutes, p. 611), contains the following:

> . . . . the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority. . . .

There are many decisions affirming the jurisdiction of the United States Courts where Federal questions are involved. The Circuit Court of the United States for the Eastern District of Louisiana, by PARDEE, C. J. (BILLINGS, D. J., concurring), said:

> The second plea is to the jurisdiction of the court, on the ground that both complainant and defendant are citizens of Louisiana. The *federal question* involved in this suit, to-wit, the *constitutionality* of certain articles of the constitution of the State of Louisiana under which the defendant claims and exercises rights which impair the validity of complainant's contract, making a case in equity arising under the Constitution and laws of the United States, gives the court jurisdiction. This is no longer an open question.
>
> *Crescent City, &c. Co.* v. *Butchers' Union, &c. Co.*, 12 Fed. Rep., 225–226.

In the case of *Starin et al.* v. *New York City*, 115 U. S. 248 (29 L. ed. 388), this Court stated the rule, and collated the authorities, as follows:

> The character of a case is determined by the questions involved. *Osborn* v. *Bank of U. S.*, 9 Wheat. 824. If from the questions it appears that some title, right, privilege or immunity, on which the recovery depends, will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction, the case will be one arising under the Constitution or laws of the United States, within the meaning of that term as used in the Act of 1875; otherwise, not. Such is the effect of the decisions on this subject. *Cohens* v. *Virginia*, 6 Wheat. 279; *Osborn* v. *Bank of United States*, 9 Wheat. 824; *The Mayor* v. *Cooper*, 6 Wall, 252; *Gold Washing & Water Co.* v. *Keyes*, 96 U. S. 201; *Tennessee* v. *Davis*, 100 U. S. 264; *Railroad Co.* v. *Mississippi*, 102 U. S. 140; *Ames* v. *Kansas*, 111 U. S. 462; *Kansas Pacific* v. *Atchinson R. R. Co.*, 112 U. S. 416; *Provident Savings Soc.* v. *Ford*, 114 U. S. 641; *U. Pacific R. R. Removal Cases*, 115 U. S. 11.

Even in cases where the jurisdiction of a U. S. Court depends only upon diverse citizenship of the parties, and no constitutional question is involved, its equitable jurisdiction cannot be ousted by the fact that a remedy at law may exist under State statutes:

In the case of *McConihay* v. *Wright*, 121 U. S., 201 (30 L. ed. 932), it was contended that under the statutes of West Virginia an action in ejectment might have been maintained,

and that, therefore, the case was not one of equitable jurisdiction because the complainant had a complete and adequate remedy at law. This Court held that:

> Admitting this to be so, it, nevertheless, cannot have the effect to oust the jurisdiction in equity of the courts of the United States as previously established. That jurisdiction, as has often been decided, is vested as a part of the judicial power of the United States by the Constitution and Acts of Congress in execution thereof. Without the assent of Congress that jurisdiction cannot be impaired or diminished by the statutes of the several States regulating the practice of their own courts. Bills *quia timet*, such as the present, belong to the ancient jurisdiction in equity, and no change in State legislation giving, in like cases, a remedy by action at law, can of itself, curtail the jurisdiction in equity of the courts of the United States. The adequate remedy at law, which is the test of equitable jurisdiction in these courts, is that which existed when the Judiciary Act of 1789 was adopted, unless subsequently changed by Act of Congress.

This is reasonable. If it were otherwise, United States Courts might be ousted of their jurisdiction in equity in all cases by the simple expedient of passing a State statute something as follows:

> "Be it enacted, &c., that a court, to be known as the . . . . . Court of the State of Indiana, is hereby established to try all cases of which the Circuit Court of the United States for the District of Indiana might otherwise have equitable cognizance."

The untenability (if not absurdity) of the proposition can certainly need no further illustration.

Likewise where other questions are involved jurisdiction will be maintained. This Court—in a somewhat different connection—has said:

> Nor is it any objection that questions are involved which are not all of a Federal character. If *one* of the latter exists—if there be a *single* such ingredient in the mass—it is sufficient. That element is *decisive* upon the subject of jurisdiction.
>
> *Mayor, &c. of Nashville* v. *Cooper*, 6 Wall, 254 (18 L. ed. 851.)

The foregoing seems to be conclusive in respect to the jurisdiction of a United States Circuit Court to try a case involving the questions at issue.

IV. Does the controversy, under the circumstances involved, present a case for equitable relief, or ought remedies to have been sought at law?

Under the statute above referred to complainant had, at its own election, the clear right to bring its proceedings in the Federal Court. Having that right, it must bring its action in a *form* to enable the Court to adequately act concerning the subject-matter. From the nature of things a suit at law could not be effective in a Federal Court in a case like this. The bill (pp. 14-15) alleges:

> And your orator further shows unto your honors that the defendant Armin C. Koehne is the Treasurer of Marion county, Indiana, whose duty it is as such Treasurer, under the laws of the State of Indiana, to receive and collect taxes for the said State of Indiana, and also for Marion county in said State, and also for the city of Indianapolis within said county, and also for the School Board of the city of Indianapolis, Indiana. That a large proportion of the amounts received and collected by the said defendant as Treasurer, as aforesaid, are for and on account of and for the benefit of the *State of Indiana*, a sovereign State, and one of the United States, and that under the Constitution and laws no suit can be maintained against the State of Indiana. That it is a part of the duty of the said defendant Armin C. Koehne, as aforesaid, to pay over *into the Treasury of the State of Indiana* a large proportion of the amounts so received and collected by him as taxes, and, therefore, that if said amounts are so collected and received and paid over, they will become mixed with the moneys of the said State, and thus *be beyond reach of any process of this or any court*, and irrecoverable, *and that great and irreparable injury will result to your orator if such unlawful collection and paying over as aforesaid be not prevented.* Further that were it possible to recover such moneys after payment a *multiplicity of suits* would be necessary.

A suit in equity, therefore, was not only a proper suit under the circumstances, but the *only* effective kind of suit which could be brought in the Federal Court, to which complainant, with its Federal question, had the right to go.

The true rule for the application of equitable remedies has been laid down by this Court, and is well summarized in the following:

> The absence of a complete and adequate remedy at law is the only test of equity jurisdiction, and the application of this principle depends upon the character of the *particular case* as disclosed in the pleadings. The remedy at law must always be plain and adequate, and as practical and as efficient to the ends of justice and its prompt administration, as the remedy in equity. *Watson* v. *Sutherland*, 5 Wall., 78; *Boyce* v. *Grundy*, 3 Pet., 210; *Payne* v. *Hook*, 7 Wall., 430.

The foregoing is quoted from GOULD AND TUCKER'S NOTES, Vol. 1, p. 99, and the second sentence is substantially a literal quotation from *Watson* v. *Sutherland*, and *Boyce* v. *Grundy*.

This has also long been the established rule in Indiana, as declared by its Supreme Court in 34 Ind., 124; 44 Ind., 261; 67 Ind., 448; 98 Ind., 4; 113 Ind., 26, and 130 Ind., 549, in each of which cases it has quoted with approval the above mentioned extract from *Watson* v. *Sutherland*.

How to proceed against officers acting under an unconstitutional law is indicated in the case of *Allen* v. *B. & O. R. R. Co.*, 114 U. S., 311 (29 L. ed. 200), where this Court, quoting from *Board of Liquidation* v. *McComb*, 92 U. S., 531, declared it to be

> well settled that, when a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have a *mandamus* to compel its performance; and when such duty is threatened to be violated by some positive official act any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it. In such cases, the writs of *mandamus* and *injunction* are somewhat correlative to each other. In either case, if the officer plead the authority of an unconstitutional law for the

non-performance or violation of his duty, it will not prevent the issuing of the writ. **An unconstitutional law will be treated by the Courts as null and void.**

It seems clear enough that if an *injunction* is a proper remedy, a *suit in equity* is a proper proceeding.

THE FACTS.

This case having been decided on demurrer, its result must be wholly dependent upon the allegations of the bill, which, of course, are to be taken as true.

From the bill it clearly appears that the taxation complained of is under a statute of the State of Indiana. This especially appears from the allegations of one paragraph of the bill (p. 3) reading as follows:

> Your orator further shows unto your honors that the State of Indiana has enacted and is attempting to enforce certain statutes requiring the taxation of "patent rights" or letters patent of the United States, the provisions of said statutes in question being comprised in the act of the General Assembly of the State of Indiana, approved March 6, 1891, which by Section 50 requires that
>
> > Every person required by this act to make or deliver such statement or schedule shall set forth an account of property held or owned by him, as follows:
> >
> > . . . . . .
> >
> > Seventh. All patent rights describing them, and giving the number of each patent, and the value of each.
>
> and which in section 53 has prescribed and enacted a form of "schedule" which all property-owners are required to follow in returning their property for taxation, in and by which said schedule the "number of patent rights and value" are required to be returned for taxation in common with other personal property. And your orator says that the said statutes of the State of Indiana requiring the taxation of "patent rights" or letters patent so as aforesaid are in contravention of the Constitution and laws of the United States, and are unconstitutional, invalid and void.

The preceding paragraph of this bill alleges that the complainant is a private corporation; that it had an original capital stock of $200,000; which was afterwards increased to

$360,000; and that certain interests in certain Letters Patent were assigned to it for and in consideration of the whole amount of its said original and increased capital stock, and

> that such interests in said Letters Patent *became* and *were* its *entire* capital stock, no portion of which was ever paid in in money or other property; that your orator *has not now* and *never has had any other or different capital stock* than that herein described; so that the entire value of the capital stock of your orator *consists and always has consisted wholly of Letters Patent of the United States, and neither includes nor represents any other matter or thing of value whatsoever.*

The bill further shows that the complainant made full return of *all* its property, of every character and description, save and except the Letters Patent in question, and has paid *all* taxes due on said property.

After making the detailed allegations in respect to the taxation for the several years complained of, the bill (pp. 13–14) continues:

> Your orator further shows unto your honors that the returns for taxation made by it in the said several years 1893, 1894, 1895, 1896, 1897 and 1898, and each and every of them, contained full and complete statements of your orator's property, and that all such property and assets without exception or reservation were fully and completely returned at their full cash value, except in so far as your orator declined to return its Letters Patent for taxation. That in so far as your orator's capital stock had or has any value whatever, it was and is solely and exclusively derived from its Letters Patent as aforesaid and not otherwise. That your orator has not now and never has had any property or assets of any description saving and excepting only the said Letters Patent which could lend or impart any value to its capital stock. *That your orator's indebtedness is now and always has been an amount largely in excess of the value of all its property and assets of every description saving and excepting only its Letters Patent.* That except for its ownership of said Letters Patent your orator would now be and would always have been *insolvent*, and its capital stock *worthless. That no money or property, of any character or description, was ever paid in to your orator, as, for, or on account of its capital stock, saving and excepting only its said Letters Patent.* And

your orator further charges and avers that these facts *are now* and ***always have been*** *well known* to the defendants, who, nevertheless, having heard that your orator was in receipt of a large income from its said patents, and that its stock was for that reason regarded as of large value by the owners thereof, without right or authority, and in usurpation of powers whereof they were not possessed, have exercised or pretended to exercise the *sheerly capricious right* to tax the Letters Patent owned by your orator under the guise and pretext of taxing your orator's capital stock, which, *as defendants at the time well knew*, had no value whatever except as it represented was derived from or consisted in your orator's said patents. And your orator avers that the assessment for taxation so as aforesaid made in each of said years was, except as to the value returned by your orator in each of said years other than said Letters Patent, **based solely and exclusively upon the value as estimated by said county board of review and said State board of tax commissioners of said Letters Patent** and of said capital stock as derived from said Letters Patent, and *not* upon any other or different value or property. All to the great and manifest wrong, damage and injury of your orator, and in defiance of your orator's rights in the premises, and in violation of the Constitution and laws of the United States.

The prayers of the bill (p. 16) are for relief from any assessment and valuation for taxation of complainant's letters patent made *directly* or *indirectly* by the defendants, or either or any of them.

If the facts thus pleaded do not raise a Federal question, it seems difficult to imagine how such a question could be raised, or upon *what* facts a Federal question could be said to be predicated.

FEDERAL FRANCHISES NOT TAXABLE.

We now come to the main question:

I. Are Letters Patent of the United States taxable under State or Municipal authority?

This Court, by Mr. Chief Justice TANEY has declared:

> *The Powers of the General Government, and of the State, although both exist and are exercised within the same territorial limits, are yet separate*

and distinct sovereignties, acting separately and independently of each other, within their respective spheres.

Ableman v. *Booth*, 21 How. 506 (16 L. ed. 169).

And Mr. Chief Justice MARSHALL said:

All subjects over which the sovereign power of a State extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident.

McCulloch v. *Maryland*, 4 Wheat. 429 (4 L. ed. 607.)

Section 8 of Article 1 of the Constitution of the United States, enumerating the powers of Congress, includes that:

> To promote the progress of science and useful arts, by securing for limited times to authors and inventors the **exclusive** right to their respective writings and discoveries.

In pursuance of the authority thus given, Congress has enacted laws under which Letters Patent for new inventions are granted to inventors or their assignees:—and that section pertinent to the present inquiry reads in part as follows:

> SEC. 4884. Every patent shall contain . . . . . a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the **exclusive** right to make, use, and vend the invention or discovery throughout the United States, and the Territories thereof.

Quoting from the grant forming part of one patent so issued, we find that the form adopted agrees with the Constitution and the statute:

> Now therefore these LETTERS PATENT are to grant unto the said The Indiana Manufacturing Company, its successors or assigns, for the term of seventeen years from the twenty-seventh day of March, one thousand eight hundred and ninety-four, the **exclusive** right to make, use and vend the said invention throughout the United States and the Territories thereof.

It will be observed that the word used in the Constitution, in the Act of Congress, and in the Patent itself, is the

word "EXCLUSIVE." A patent is a *franchise*,—an **exclusive** franchise,—to the inventor or his assignee. It is his to enjoy freely, and, like other franchises granted by the General Government, without any burdens or restrictions except such as are or may be imposed under the Constitution of the United States and laws of Congress made in pursuance thereof. Certainly such a franchise can not be subjected to the burdens of State or municipal taxation. The applicable decisions are believed to sustain this view.

In *California* v. *Central Pacific R. R. Co.*, 127 U. S., 1 (32 L. ed. 150), this Court, in considering a question essentially the same, say:

> how can it be *possible* that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? . . . . . .
> Recollecting the fundamental principle that the Constitution, laws and treaties of the United States are the supreme law of the land, it seems to us **almost absurd** to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from, and is a portion of, the power of the Government that confers it. To tax it is not only derogatory to the dignity, but *subversive of the powers*, of the Government, and *repugnant* to its paramount sovereignty.
>
> It is unnecessary to cite cases on this subject. The principles laid down by this Court in *McCulloch* v. *Maryland*, *supra*; *Osborn* v. *Bank of U. S.*, 22 U. S., 9 Wheat., 738, and *Brown* v. *Maryland*, 25 U. S., 12 Wheat., 419, and in numerous cases since which have followed in their lead, abundantly sustain the views we have expressed. It may be added that these views are **not in conflict** with the decisions of this Court in *Thomson* v. *Union Pacific R. R. Co.*, 76 U. S., 9 Wall., 579, and *Union Pacific R. R. Co.* v. *Peniston*, 85 U. S., 18 Wall., 5. As explained in the opinion of the Court in the latter case, the tax there was upon the property of the company, and not upon its franchises or operations. 85 U. S., 18 Wall., 35.

In the great case of *McCulloch* v. *Maryland*, 4 Wheat. 316, (4 L. ed. 579), Mr. Chief Justice MARSHALL, in delivering the unanimous opinion of the Court, said:

If we measure the power of taxation residing in a State, by the extent of sovereignty which the people of a single State possess, and can confer on its government, we have an intelligible standard, applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property of a State unimpaired; which leaves to a State the command of all its resources, and which places beyond its reach, all those powers which are conferred by the people of the United States on the government of the Union, and all those means which are given for the purpose of carrying those powers into execution. We have a principle which is safe for the States, and safe for the Union. We are relieved, as we ought to be, from clashing sovereignty; from interfering powers; from a repugnancy between a right in one government to pull down what there is an acknowledged right in another to build up; from the incompatability of a right in one government to destroy what there is a right in another to preserve.

. . . . . .

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance, in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied.

. . . . . .

If we apply the principle for which the State of Maryland contends, to the Constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the States. The American people have declared their Constitution, and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the States.

If the States may *tax* one instrument, employed by the government in the execution of its powers, they may tax *any and every other* instrument. They may tax the mail; they may tax the mint; **they may tax patent-rights;** they may tax the papers of the custom-house; they may tax judicial process; they may tax

> all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States.
>
> . . . . . .
>
> The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have *no power*, by *taxation* or otherwise, to retard, impede, *burden*, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has declared.

See also *Osborn* v. *Bank*, 9 Wheat., 738 (6 L. ed. 204.)

Federal Courts are not alone in these views. The nontaxability of patents has several times been recognized and declared by State courts.

The Supreme Court of the State of Michigan, speaking by Judge COOLEY, has expressly recognized and declared that:

> Any State legislation which undertakes to limit or restrict in any manner the privilege which the Letters Patent confer is an *invasion* of the sphere of national authority, and therefore *void*.
>
> *People* v. *Russell*, 49 Mich., 617.

In this case they cited with approval *Cranson* v. *Smith*, 37 Mich., 309, in which it was said:

> In those cases where the congressional power is lawfully exercised, it is *supreme*.
>
> . . . . . .
>
> The Constitution of the United States not only allows but favors the special protection of inventors. The measure of that protection, and its conditions, can not be fixed by any power but Congress, and the remedy for abuses or defects in the legislation of that body must be found in its own revision of its own laws. It is not competent for State statutes to deal with them or to revise the national policy.

For other decisions by State courts of last resort see *post*, (pp. 18–21), where decisions from New York and Pennsylvania are quoted from and discussed.

The subject of interstate commerce has given rise to many questions which bear a strong analogy to those now under consideration, and which this Court has been called upon to consider.

In the case of *Robbins* v. *Taxing District of Shelby County*, 120 U. S. 489 (30 L. ed. 694), this Court said:

> Certain principles have been already established by the decisions of this Court which will conduct us to a satisfactory decision. Among those principles are the following:
>
> . . . . . .
>
> 2. Another established doctrine of this Court is that, where the power of Congress to regulate is exclusive, the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions;
>
> . . . . . .
>
> 3. It is also an established principle, as already indicated, that the only way in which commerce between the States can be legitimately affected by State laws is when, by virtue of its *police power*, and its jurisdiction over persons and property within its limits, a State provides for

—various matters not necessary here to enumerate.

Applying these principles to the present case, it may be said that the power of Congress respecting patents under the Constitution has been exercised, and it having failed "to make express regulations" respecting the taxation of patents, "indicates its will that the subject shall be left free from any restrictions or impositions"; subject, nevertheless, of course, to the *police power* of the States, as held by this Court in *Patterson* v. *Kentucky*, 97 U. S., 501 (24 L. ed. 1115), and in *Webber* v. *Virginia*, 103 U. S., 344. (26 L. ed. 265.) In the latter case the following language is used:

> It is only the right to the invention or discovery, **the incorporeal right,** WHICH THE STATE CAN NOT INTERFERE WITH.

In the case of *Philadelphia & Southern Mail Steamship Co.* v. *Pennsylvania*, 122 U. S., 326 (30 L. ed. 1200), this Court, in further discussion of these questions, used the following language:

In view of the decisions of this Court, it cannot be pretended that the State could constitutionally regulate or interfere with that commerce itself. But taxing is one of the forms of regulation. It is one of the *principal* forms. Taxing the transportation, either by its tonnage, or its distance, or by the number of trips performed, or in any other way, would certainly be a regulation of the commerce, a restriction upon it, a burden upon it. Clearly, this could not be done by the State without interfering with the power of Congress. Foreign commerce has been fully regulated by Congress, and any regulations imposed by the States upon that branch of commerce would be a palpable interference. If Congress has not made any express regulations with regard to interstate commerce, *its inaction*, as we have often held, *is equivalent to a declaration that it shall be free, in all cases where its power is exclusive; and* **its power is necessarily exclusive whenever the subject matter is national in its character and properly admits of only one uniform system.**

. . . . . .

Nor does it make any difference whether such commerce is carried on by individuals or corporations.

. . . . . .

The corporate franchises, the property, the business, the income of corporations created by a State may undoubtedly be taxed by the State; but *in imposing such taxes care should be taken not to interfere with or hamper, directly or by indirection*, interstate or foreign commerce, **or any other matter exclusively within the jurisdiction of the Federal Government.**

In *Leloup* v. *Port of Mobile*, 127 U. S., 640 (32 L. ed., 311), this Court stated that "upon the fairest and most just construction of the Constitution"

> no state has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress.

So we say that a State has no right to lay a tax on patent rights "in any form," whether directly upon the patents themselves, as required by the Indiana statute, or upon the stock of a corporation issued for and representing such patents, for the reason "that such taxation is a burden" upon the Federal franchise granted by the Government of the United States, "and amounts to a regulation of it, which belongs solely to Congress."

In *Crutcher* v. *Commonwealth of Kentucky*, 141 U. S., 47 (35 L. ed., 649), this Court said:

> We have repeatedly decided that a State law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it.

We say here "that a state law is unconstitutional and void" which requires a party to pay a tax on a patent right, directly or indirectly, "no matter how specious the pretext may be for imposing it."

Attention is also called to the case *In re Sheffield et al.*, 64 Fed. Rep., 833. In this case the defendants, Sheffield and Edmunds, were arrested in a prosecution for selling patent rights without payment of a *license* ***tax*** prescribed by a statute of the State of Kentucky. The prisoners were taken before the United States Court at Louisville, on a writ of *habeas corpus*. Judge BARR discharged the petitioners, and, in the course of his opinion, made the following pertinent statements:

> Thus the question must be, can a State tax, or authorize a county or city to tax, a right—an incorporeal right—which is granted by the United States, and which, under the Constitution, can alone be granted by the United States? We think that question must be answered in the negative, under the principle settled in the case of *McCulloch* v. *State of Maryland*, 4 Wheat., 316, and the many subsequent cases.
>
> . . . . . .
>
> But **the patent right itself,** *i. e.* the right to exclude all others from the manufacture, use, or sale of the invention or discovery, which is a grant by the United States, **can not be taxed by a State.**
>
> . . . . . .

> We conclude the statutes of Kentucky, under which the petitioners, Sheffield and Edmunds, are prosecuted and imprisoned, are *unconstitutional and void.*

It is very gratifying to counsel to find, in a decision written since the greater portion of his brief was originally prepared, such a literal and exact concurrence with his views.

It is no new thing for the State of Indiana to attempt illegal forms of taxation. In 1873 it was attempted to tax the gross receipts of transportation companies. In June, 1876, Judge DRUMMOND decided that law unconstitutional.

Indiana v. *American Express Co.*, 7 Biss., 227; Fed. Cas., No. 2,071.

This brief so far has proceeded upon the assumption that the taxation complained of will be, under the allegations of the bill, treated as though made upon the patents, in effect and actually, if not nominally.

It is, however, anticipated that a strenuous effort will be made to differentiate between appellant's patents and stock, and to make it appear that in nominally taxing the latter appellees have succeeded in evading conflict with United States law. This leads us to a particular discussion of the *form* of question suggested near the beginning:

II. Is the stock of a corporation which consists wholly of Letters Patent of the United States, taxable as stated?

The authorities seem to be quite as clear on this form of the question as on the other. While the exact question involved and in the form here presented has probably not before been passed on by a Federal Court, it seems to have several times been before the Courts of last resort of some of our more important States, and has by them been most carefully considered with substantially uniform result.

The Michigan cases have already been referred to.

The case of *Commonwealth* v. *Edison Elec. Lt. Co.*, 157 Pa. St. Rep., 529, is believed to be absolutely on "all fours" with the present case, and clearly and conclusively decisive of the question. The decision is short, and reads as follows:

GREEN, J. The fourth finding of fact by the learned Court below, which is fully sustained by the testimony, declares that "thirty-five thousand dollars in cash and three thousand shares of stock were issued and paid by the defendant company to the Edison Electric Light Company of New York, for certain rights under its patents within the City of Philadelphia, and that without these rights the defendant could not carry on its business and furnish electric light to its customers." Also that "in consideration for said cash and stock paid to the Electric Light Company of New York, the defendant did not receive any tangible property whatever, but merely certain intangible rights or licenses under said letters patent." Also that "the defendant does not lease from any persons from whom said licenses were obtained any tangible property whatever, nor does it have in its possession any tangible property belonging to said persons."

This state of facts brings the case within the principle that **capital stock invested in patents or patent rights is not taxable under State laws,** as established by our decisions in the cases of

Commonwealth v. *Westinghouse Electric Co.*, 151 Pa. St., 265;

Commonwealth v. *Westinghouse Air Brake Co.*, 151 Pa. St., 276; and

Commonwealth v. *Philadelphia Co.*, 157 Pa. St., 527, in which the opinion has just been filed.

We are therefore of the opinion that the learned Court below was right in its ruling.

Judgment affirmed.

It may be said that in the Pennsylvania cases only a *part* of the stock was issued for the patents, and was, therefore, non-taxable. Counsel for appellant is unable to observe the distinction. *All* the stock *which* ***was*** *issued for patents* was held not to be taxable, and there is no intimation in the decision that if *all* the stock had been so issued that any different rule as to the remainder of it would have been recognized. In the case at bar, in fact, and according to the record, every dollar of the stock was issued for the patents, and for nothing else.

This matter has also, since the present litigation was begun, been the subject of adjudication in the courts of the State of New York.

September 7, 1897, the Supreme Court, Appellate Division, Second Department, in the case of *People ex rel. Edison Electric Illuminating Co. of Brooklyn* v. *Board of Assessors of City of Brooklyn*, held that stock of a corporation issued for patent rights was not taxable. In that case it was said:

> The relator, an electric light company, by its return to the board of assessors, and the evidence of its officers given before that board, showed that its capital stock was $3,750,000, all of which had been paid in in money, except the sum of $945,000, which was paid for patent rights.

The whole capital stock had been assessed for taxation, including that "paid for patent rights."

The Court, after giving the particulars, further said:

> On a review of the proceedings of the board of assessors by *certiorari*, an order was made by the special term wholly vacating the assessment. From that order this appeal is taken.
>
> We think the order of the special term correct. It is true that the market value of the share stock of the relator was par or better. This may have justified the conclusion that, in a certain sense, the stock of the relator was not impaired; but it did not justify, *in the face of positive evidence to the contrary*, the assumption that the capital stock, even if unimpaired, was represented by assets or property which, under the law of this state, are subject to local assessment. The exclusive privilege or franchise, under *Letters Patent of the United States*, acquired by the relator for the sum of $945,000, and carried by it at that value *was not subject to state or local taxation*.
>
> . . . . . .
>
> The order appealed from should be affirmed, with $10 costs and disbursements. All concur.
>
> 46 New York Supplement, 388.

An appeal was taken from the Supreme Court to the Court of Appeals of the State, which, on October 4, 1898, affirmed the decision of the Supreme Court, and, in the course of the opinion, said:

> The Constitution of the United States (article 1, § 8, subd. 8) conferred upon congress the power to "promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the ex-

clusive right to their respective writings and discoveries." In pursuance of this power, congress enacted that patents should be issued to inventors, which should secure to them for a limited term the "exclusive right to make, use and vend the invention or discovery throughout the United States and the territories thereof." Rev. St. U. S., § 4884. Patent rights are, therefore, granted under the Federal Constitution, and necessarily for the promotion of Federal purposes. *Grant* v. *Raymond*, 6 Pet., 218, 241; *Ames* v. *Howard*, 1 Sumn., 482, Fed. Cas. No. 326; *Blanchard* v. *Sprague*, 3 Sumn., 535, Fed. Cas. No. 1,518.

The Federal purpose is primarily to stimulate genius, talent, and enterprise by holding out that encouragement which patents give, but ultimately to secure to the whole community the great advantages that flow from the free communication of secrets, processes, and machinery. The next step is that, *patent rights being created under the Federal Constitution and laws for a Federal purpose, the States are without the right to interfere with them.* The right to tax a Federal agency constitutes a right to interfere with, to obstruct, and even to destroy the agency itself, for, conceding the right of the State to tax at all, then it may tax to the point of destruction.

. . . . . .

The Federal government having the right to create the agency, it necessarily has the right to protect it, not only from destruction, but from interference from any other government, whether such interference be in the guise of taxation, or otherwise, as the power to tax involves the power to destroy, and the power to destroy may render useless the power to create.

. . . . . .

The order should be affirmed. All concur. Order affirmed.

156 N.Y., 417; 51 Northeastern Reporter, 269.

The reasoning of the foregoing opinion is logical and consistent, and is believed to be conclusive.

If it should be suggested that capital stock, although paid up exclusively by the transfer of letters patent to the company, might have a value in excess of that of the letters patent, which excess value would be taxable, while all this might be conceded, yet in this case it would not avail appel-

lee. The complaint avers that the value of the letters patent was taken into consideration in ascertaining the value of the capital stock. The assessment does not separate the amount based upon the value of the letters patent, from the amount, if any, based upon a value in excess of that of the letters patent. Under such circumstances the assessment is void as an entirety.

This was held in *Santa Clara County* v. *Southern Pacific R. R. Company*, 118 U. S., 394 (30 L. ed. 118), and upon the authority of this case by the Supreme Court of Indiana in *Hart* v. *Smith*, 64 N. E. Rep., 661.

THAT WHICH CANNOT BE DONE DIRECTLY CANNOT BE DONE INDIRECTLY.

Certainly the taxation of the stock of a corporation can, at the most, only be said to be an indirect taxation of the property of the corporation of which the stock is composed. We are not dealing now with cases where there is a special tax on stock certificates, or an arbitrary tax on the corporation for the privilege of existing, which are widely different matters.

This Court, in the case of *Handley* v. *Stutz*, 139 U. S., 417, although in another connection, defined the relations of stock and property represented thereby, saying:

> The stock of a corporation is supposed to *stand in the place* of actual property of substantial value, and as being a convenient method of representing the interest of each stockholder in such property.

It seems hardly necessary to cite authorities for the proposition that that which can not be done directly can not be done indirectly. However, the following cases, controlling of the question, which also involve illegal taxation, are called to attention.

In the "License Cases," 5 How., 504 (12 L. ed. 256), Mr. Chief Justice TANEY, in discussing the power of taxation by a State of imports, said:

> It can not be done directly, in the shape of a duty on imports, for that is expressly prohibited. And as it can not be done directly, it could hardly be a just and sound construction of the Constitution which would enable a State to accomplish precisely the same thing under another name, and in a different form.

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In *Brown* v. *Maryland*, 12 Wheat., 419 (6 L. ed. 678), the Court said:

> But if it should be proved that a duty on the article itself would be repugnant to the Constitution, it is still argued that this is not a tax upon the article, but on the person. The State, it is said, may tax occupations, and this is nothing more.
>
> It is impossible to conceal from ourselves that this is varying the form, without varying the substance . . . . All must perceive that a tax on the sale of an article, imported only for sale, is a tax on the article itself. . . . .
>
> So, a tax on the occupation of an importer is, in like manner, a tax on importation. It must add to the price of the article, and be paid by the consumer, or by the importer himself, in like manner as a direct duty on the article itself would be made. This the State has not a right to do, because it is prohibited by the Constitution.

In *Crandall* v. *Nevada*, 6 Wall., 35 (18 L. ed., 745), it is said:

> It is claimed by counsel for the State that the tax thus levied is not a tax upon the passenger, but upon the business of the carrier who transports him.
>
> If the act were much more skillfully drawn, to sustain this hypothesis, than it is, we should be very reluctant to admit that any form of words which had the effect to compel every person traveling through the country by the common and usual modes of public conveyance to pay a specific sum to the State, was not a tax upon the right thus exercised.

In *Philadelphia & Reading R. R. Co.* v. *Pennsylvania*, 15 Wall., 232 (21 L. ed., 146), it is said:

> It is of national importance that over that subject there should be but one regulating power, for if one State can directly tax persons or property passing through it, or tax them indirectly by levying a tax upon their transportation, every other may, ... It was to guard against the possibility of such . . . . embarrassments, no doubt, that the power . . . . was conferred upon the Federal government.

A PATENT IS A CONTRACT.

The Constitution of the United States, Section 10, Article 1, says:

> No State shall . . . . pass any . . . . law impairing the obligation of contracts.

A patent is a contract, existing between the inventor on the one hand, and the general public on the other; and is entered into under the Constitution and Laws of the United States. The consideration to the inventor is a temporary monopoly. The consideration to the public is the clear disclosure of the invention, and its free use when the monopoly —or patent—has expired.

Whitney v. *Emmett*, Baldw., 303; 1 Robb Pat. Cas., 567; Fed. Cas. No. 17,585;

Kendall et. al. v. *Winsor*, 21 How. 322 (16 L. ed. 165.)

The contract in question is of a high character,—being by no less a party than the people of this great nation, acting in their sovereign capacity, who have solemnly granted the rights in question, for a consideration.

A Canadian authority states the matter admirably:

> It is universally admitted in practice, and is certainly undeniable in principle, that the granting of Letters-Patent to inventors is not the creation of an unjust or undesirable monopoly, nor the concession of a privilege by mere gratuitous favor; but a *contract* between the State and the discoverer.
>
> . . . . . .
>
> Invention being recognized as a property, and a ***contract*** having intervened between society and the proprietor for a settlement of rights between them, it follows that unless very serious reasons, deduced from the liberal [literal] interpretation of the terms of the contract, interpose, *the patentee's rights ought to be held as things which are not to be trifled with, as things sacred in fact,* ***confided to the guardianship and to the honor of the State and of the courts.***

Barter v. *Smith*, 2 Exch. Rep. of Canada, 455, at pp. 477-478.

To permit States or municipalities to levy taxes upon these contracts would impair the obligations which have been entered into by the Government, on behalf of the people, with the inventor or his assignee.

Moreover "the power to tax involves the power to destroy."

McCulloch v. *Maryland, supra.*

The statutes of the State of Indiana, under which the acts complained of were performed, clearly are in impairment of the obligations of these contracts, and are therefore unconstitutional and void.

The question is: Shall this State statute be permitted to impair the obligation of this contract by imposing additional burdens or obligations not called for by the contract itself, or by the Constitution or the statute of the United States under which the contract was entered into?

The second paragraph, Article VI, of the Constitution says:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof, . . . shall be the Supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Possibly this matter may be lent a new emphasis by putting the inquiry in this form: Are State or County taxing officers, acting under color of State law, to be permitted to nullify (or annex any conditions to) a contract made by the whole people of this great country through their duly chosen and legally authorized representatives?

No Court has ever affirmed the proposition into which appellees' contention resolves itself. It remained for the Attorney-General of the State of Indiana, and other Indiana State taxation officials, to seriously contend for a proposition so absurd.

> But no one in this country, however exalted in station or illustrious in character, is above the law. No State official can, in assuming the name of the State, shelter himself behind her sovereign immunity.
>
> *Southern Ry. Co.* v. *North Carolina Ry. Co.*, 81 Fed. Rep., 595.

While the fact has not much bearing upon the present case, it may be well enough to state that patents are not such monopolies as are opposed to the policy of the law, as is established by the following authorities:

Allen v. *Hunter*, Fed. Cas. No. 225;
Atlantic Works v. *Brady*, 107 U. S., 203;
Stevens v. *Keating*, 2 Webs. Pat. Cas., 181;
WALKER on Patents, Sec. 152, p. 131;
Seymour v. *Osborne*, 11 Wall., 516;
CURTIS' Law of Patents, preliminary observations.

SUMMARY.

Our positions briefly stated, are—

1. That a patent ***can not*** be taxed by a State:

a. Because it is a Federal franchise not subject to State authority.

b. Because to do so would impair a contract. Furthermore, a contract to which the United States is a party.

2. That a patent ***ought not*** to be taxed, because:

a. It has no ascertainable value.

b. It expires in a limited time; after which—actually and potentially—its value is at an end.

c. Meantime its entire value has been measured by its earnings, and has gone into and become a part of the mass of ordinary property, which is taxable, and presumably is taxed.

3. That the capital stock of a corporation, issued for and representing a patent, is to all intents and purposes, the same thing as the patent itself.

4. That to tax such stock would be the same thing as taxing the patents for which it was issued.

5. That the statutes of the State of Indiana requiring the taxation of "patent rights" contravene Federal law, and are therefore void.

6. That the acts of appellees complained of, being based upon a void law, are also void, and without force or authority, and that acts in continuation thereof, or other acts of the same character, should be prohibited and enjoined.

It is respectfully submitted that the decree appealed from should be reversed and the cause remanded with instructions to the lower court to enter a decree in accordance with the prayers of the bill of complaint.

CHESTER BRADFORD,
for Appellant.

INDIANAPOLIS, INDIANA, September 5, 1902.

20352
OCT 24 1902
JAMES H. McKENNEY,
Clerk

No. 177.

(18,283.)

Reply Brief of Bradford & Winter
for Appellant

Supreme Court of the United States.

Filed Oct. 24, 1902.

On Appeal from the U. S. Circuit Court for the District of Indiana.

THE INDIANA MANUFACTURING COMPANY,
Appellant,
vs.
ARMIN C. KOEHNE, *et al.*,
Appellees.

No. 177.
IN EQUITY.
October Term,
1902.

Amended.

BRIEF FOR APPELLANT

AND

REPLY TO APPELLEES' BRIEF.

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BRIEF FOR APPELLANT.

May it Please the Court:

The pages noted thus (p. ....) are those of the printed record. Quotations are indented.

The record in this case consists of the bill (pp. 1-16); the temporary injunction *pendente lite* (p. 18); an amendatory and supplemental bill bringing in the taxation made after the original bill was filed (pp. 18-20); demurrers by the defendants (pp. 21-23); the decree by the Court dismissing the bill for want of equity (p. 24); and the various papers necessary to the taking and perfecting of the appeal (pp. 24-26.)

STATEMENT OF THE CASE.

The broad and important question presented for decision is:

I. Are Letters Patent of the United States taxable under State or Municipal authority?

This question in this case will also be presented in the following form:

II. Is the stock of a corporation which consists wholly of Letters Patent of the United States, taxable as stated?

A second question raised here is:

III. Was such a suit as this maintainable in a United States Circuit Court, or should recourse have been had to the Courts of the State of Indiana?

Incidentally to this second question, we may be asked:

IV. Does the controversy, under the circumstances involved, present a case for equitable relief, or ought remedies to have been sought at law?

The court below filed no written opinion; but indicated, in announcing his decision orally, that on the *first* and *main* question his views were with the complainant, but on the *second* question he considered that the law was with the defendants, and therefore sustained the demurrers and dismissed the bill for want of equity. These questions will therefore be discussed in inverse order, as the questions of jurisdiction and procedure are first to be determined.

ASSIGNMENT OF ERRORS.

The following (p. 25) are the errors assigned:

First. That the court erred in holding that the complainant had an adequate remedy at law.

Second. That the court erred in holding that the complainant had a suitable and adequate remedy under the laws of the State of Indiana.

Third. That the court erred in holding that the bill of complaint herein is without equity.

Fourth. That the court erred in sustaining the demurrers of the defendants.

Fifth. That the court erred in not overruling the demurrers of the defendants.

Sixth. That the court erred generally in its decision and decree in this case, and particularly in this, in dismissing complainant's bill of complaint.

ARGUMENT.

III. Was such a suit as this mantainable in a United States Circuit Court, or should recourse have been had to the Courts of the State of Indiana?

The case is one arising "under the Constitution and Laws of the United States," so that a *federal question* is involved; and (p. 16) "the sum or value in dispute exceeds, exclusive of interests and costs, the sum or value of two thousand dollars."

The bill alleges, in effect, that the taxation in question was authorized and required by "certain statutes" or laws "of the State of Indiana," which laws are claimed to be "in contravention of the Constitution and Laws of the United States" (p. 3) and therefore void, because patent rights granted by the United States can not be subjected to State taxation.

It further appears that the obligation of the *contract* existing between the inventor and the general public is impaired by such taxation.

A party having a grievance of this character, involving a Federal question, has a right to go into a Federal Court for the purpose of having such question there determined, under the act of March 3, 1887, as corrected by the act of August 13, 1888, which act (second edition supplement to Revised Statutes, p. 611), contains the following:

> . . . . the circuit courts of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority. . . .

There are many decisions affirming the jurisdiction of the United States Courts where Federal questions are involved. The Circuit Court of the United States for the Eastern District of Louisiana, by PARDEE, C. J. (BILLINGS, D. J., concurring), said:

> The second plea is to the jurisdiction of the court, on the ground that both complainant and defendant are citizens of Louisiana. The *federal question* involved in this suit, to-wit, the *constitutionality* of certain articles of the constitution of the State of Louisiana under which the defendant claims and exercises rights which impair the validity of complainant's contract, making a case in equity arising under the Constitution and laws of the United States, gives the court jurisdiction. This is no longer an open question.
>
> *Crescent City, &c. Co.* v. *Butchers' Union, &c. Co.*, 12 Fed. Rep., 225–226.

In the case of *Starin et al.* v. *New York City*, 115 U. S. 248 (29 L. ed. 388), this Court stated the rule, and collated the authorities, as follows:

> The character of a case is determined by the questions involved. *Osborn* v. *Bank of U. S.*, 9 Wheat. 824. If from the questions it appears that some title, right, privilege or immunity, on which the recovery depends, will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction, the case will be one arising under the Constitution or laws of the United States, within the meaning of that term as used in the Act of 1875; otherwise, not. Such is the effect of the decisions on this subject. *Cohens* v. *Virginia*, 6 Wheat. 279; *Osborn* v. *Bank of United States*, 9 Wheat. 824; *The Mayor* v. *Cooper*, 6 Wall, 252; *Gold Washing & Water Co.* v. *Keyes*, 96 U. S. 201; *Tennessee* v. *Davis*, 100 U. S. 264; *Railroad Co.* v. *Mississippi*, 102 U. S. 140; *Ames* v. *Kansas*, 111 U. S. 462; *Kansas Pacific* v. *Atchinson R. R. Co.*, 112 U. S. 416; *Provident Savings Soc.* v. *Ford*, 114 U. S. 641; *U. Pacific R. R. Removal Cases*, 115 U. S. 11.

Even in cases where the jurisdiction of a U. S. Court depends only upon diverse citizenship of the parties, and no constitutional question is involved, its equitable jurisdiction cannot be ousted by the fact that a remedy at law may exist under State statutes:

In the case of *McConihay* v. *Wright*, 121 U. S., 201 (30 L. ed. 932), it was contended that under the statutes of West Virginia an action in ejectment might have been maintained,

and that, therefore, the case was not one of equitable jurisdiction because the complainant had a complete and adequate remedy at law. This Court held that:

> Admitting this to be so, it, nevertheless, cannot have the effect to oust the jurisdiction in equity of the courts of the United States as previously established. That jurisdiction, as has often been decided, is vested as a part of the judicial power of the United States by the Constitution and Acts of Congress in execution thereof. Without the assent of Congress that jurisdiction cannot be impaired or diminished by the statutes of the several States regulating the practice of their own courts. Bills *quia timet*, such as the present, belong to the ancient jurisdiction in equity, and no change in State legislation giving, in like cases, a remedy by action at law, can of itself, curtail the jurisdiction in equity of the courts of the United States. The adequate remedy at law, which is the test of equitable jurisdiction in these courts, is that which existed when the Judiciary Act of 1789 was adopted, unless subsequently changed by Act of Congress.

This is reasonable. If it were otherwise, United States Courts might be ousted of their jurisdiction in equity in all cases by the simple expedient of passing a State statute something as follows:

> "Be it enacted, &c., that a court, to be known as the . . . . . Court of the State of Indiana, is hereby established to try all cases of which the Circuit Court of the United States for the District of Indiana might otherwise have equitable cognizance."

The untenability (if not absurdity) of the proposition can certainly need no further illustration.

Likewise where other questions are involved jurisdiction will be maintained. This Court—in a somewhat different connection—has said:

> Nor is it any objection that questions are involved which are not all of a Federal character. If *one* of the latter exists—if there be a *single* such ingredient in the mass—it is sufficient. That element is *decisive* upon the subject of jurisdiction.
>
> *Mayor, &c. of Nashville* v. *Cooper*, 6 Wall, 254 (18 L. ed. 851.)

The foregoing seems to be conclusive in respect to the jurisdiction of a United States Circuit Court to try a case involving the questions at issue.

IV. Does the controversy, under the circumstances involved, present a case for equitable relief, or ought remedies to have been sought at law?

Under the statute above referred to complainant had, at its own election, the clear right to bring its proceedings in the Federal Court. Having that right, it must bring its action in a *form* to enable the Court to adequately act concerning the subject-matter. From the nature of things a suit at law could not be effective in a Federal Court in a case like this. The bill (pp. 14-15) alleges:

> And your orator further shows unto your honors that the defendant Armin C. Koehne is the Treasurer of Marion county, Indiana, whose duty it is as such Treasurer, under the laws of the State of Indiana, to receive and collect taxes for the said State of Indiana, and also for Marion county in said State, and also for the city of Indianapolis within said county, and also for the School Board of the city of Indianapolis, Indiana. That a large proportion of the amounts received and collected by the said defendant as Treasurer, as aforesaid, are for and on account of and for the benefit of the *State of Indiana*, a sovereign State, and one of the United States, and that under the Constitution and laws no suit can be maintained against the State of Indiana. That it is a part of the duty of the said defendant Armin C. Koehne, as aforesaid, to pay over *into the Treasury of the State of Indiana* a large proportion of the amounts so received and collected by him as taxes, and, therefore, that if said amounts are so collected and received and paid over, they will become mixed with the moneys of the said State, and thus *be beyond reach of any process of this or any court*, and irrecoverable, *and that great and irreparable injury will result to your orator if such unlawful collection and paying over as aforesaid be not prevented.* Further that were it possible to recover such moneys after payment a *multiplicity of suits* would be necessary.

A suit in equity, therefore, was not only a proper suit under the circumstances, but the *only* effective kind of suit which could be brought in the Federal Court, to which complainant, with its Federal question, had the right to go.

The true rule for the application of equitable remedies has been laid down by this Court, and is well summarized in the following:

> The absence of a complete and adequate remedy at law is the only test of equity jurisdiction, and the application of this principle depends upon the character of the *particular case* as disclosed in the pleadings. The remedy at law must always be plain and adequate, and as practical and as efficient to the ends of justice and its prompt administration, as the remedy in equity. *Watson* v. *Sutherland*, 5 Wall., 78; *Boyce* v. *Grundy*, 3 Pet., 210; *Payne* v. *Hook*, 7 Wall., 430.

The foregoing is quoted from GOULD AND TUCKER'S NOTES, Vol. 1, p. 99, and the second sentence is substantially a literal quotation from *Watson* v. *Sutherland*, and *Boyce* v. *Grundy*.

This has also long been the established rule in Indiana, as declared by its Supreme Court in 34 Ind., 124; 44 Ind., 261; 67 Ind., 448; 98 Ind., 4; 113 Ind., 26, and 130 Ind., 549, in each of which cases it has quoted with approval the above mentioned extract from *Watson* v. *Sutherland*.

How to proceed against officers acting under an unconstitutional law is indicated in the case of *Allen* v. *B. & O. R. R. Co.*, 114 U. S., 311 (29 L. ed. 200), where this Court, quoting from *Board of Liquidation* v. *McComb*, 92 U. S., 531, declared it to be

> well settled that, when a plain official duty, requiring no exercise of discretion, is to be performed, and performance is refused, any person who will sustain personal injury by such refusal may have a *mandamus* to compel its performance; and when such duty is threatened to be violated by some positive official act any person who will sustain personal injury thereby, for which adequate compensation cannot be had at law, may have an injunction to prevent it. In such cases, the writs of *mandamus* and *injunction* are somewhat correlative to each other. In either case, if the officer plead the authority of an unconstitutional law for the

non-performance or violation of his duty, it will not prevent the issuing of the writ. **An unconstitutional law will be treated by the Courts as null and void.**

It seems clear enough that if an *injunction* is a proper remedy, a *suit in equity* is a proper proceeding.

THE FACTS.

This case having been decided on demurrer, its result must be wholly dependent upon the allegations of the bill, which, of course, are to be taken as true.

From the bill it clearly appears that the taxation complained of is under a statute of the State of Indiana. This especially appears from the allegations of one paragraph of the bill (p. 3) reading as follows:

> Your orator further shows unto your honors that the State of Indiana has enacted and is attempting to enforce certain statutes requiring the taxation of "patent rights" or letters patent of the United States, the provisions of said statutes in question being comprised in the act of the General Assembly of the State of Indiana, approved March 6, 1891, which by Section 50 requires that
>
> > Every person required by this act to make or deliver such statement or schedule shall set forth an account of property held or owned by him, as follows:
> >
> > . . . . . .
> >
> > Seventh. All patent rights describing them, and giving the number of each patent, and the value of each.
>
> and which in section 53 has prescribed and enacted a form of "schedule" which all property-owners are required to follow in returning their property for taxation, in and by which said schedule the "number of patent rights and value" are required to be returned for taxation in common with other personal property. And your orator says that the said statutes of the State of Indiana requiring the taxation of "patent rights" or letters patent so as aforesaid are in contravention of the Constitution and laws of the United States, and are unconstitutional, invalid and void.

The preceding paragraph of this bill alleges that the complainant is a private corporation; that it had an original capital stock of $200,000; which was afterwards increased to

$360,000; and that certain interests in certain Letters Patent were assigned to it for and in consideration of the whole amount of its said original and increased capital stock, and

> that such interests in said Letters Patent *became* and *were* its *entire* capital stock, no portion of which was ever paid in in money or other property; that your orator *has not now* and *never has had any other or different capital stock* than that herein described; so that the entire value of the capital stock of your orator *consists and always has consisted wholly of Letters Patent of the United States, and neither includes nor represents any other matter or thing of value whatsoever.*

The bill further shows that the complainant made full return of *all* its property, of every character and description, save and except the Letters Patent in question, and has paid *all* taxes due on said property.

After making the detailed allegations in respect to the taxation for the several years complained of, the bill (pp. 13–14) continues:

> Your orator further shows unto your honors that the returns for taxation made by it in the said several years 1893, 1894, 1895, 1896, 1897 and 1898, and each and every of them, contained full and complete statements of your orator's property, and that all such property and assets without exception or reservation were fully and completely returned at their full cash value, except in so far as your orator declined to return its Letters Patent for taxation. That in so far as your orator's capital stock had or has any value whatever, it was and is solely and exclusively derived from its Letters Patent as aforesaid and not otherwise. That your orator has not now and never has had any property or assets of any description saving and excepting only the said Letters Patent which could lend or impart any value to its capital stock. *That your orator's indebtedness is now and always has been an amount largely in excess of the value of all its property and assets of every description saving and excepting only its Letters Patent.* That except for its ownership of said Letters Patent your orator would now be and would always have been *insolvent*, and its capital stock *worthless. That no money or property, of any character or description, was ever paid in to your orator, as, for, or on account of its capital stock, saving and excepting only its said Letters Patent.* And

> your orator further charges and avers that these facts *are now* and ***always have been*** *well known* to the defendants, who, nevertheless, having heard that your orator was in receipt of a large income from its said patents, and that its stock was for that reason regarded as of large value by the owners thereof, without right or authority, and in usurpation of powers whereof they were not possessed, have exercised or pretended to exercise the *sheerly capricious right* to tax the Letters Patent owned by your orator under the guise and pretext of taxing your orator's capital stock, which, *as defendants at the time well knew*, had no value whatever except as it represented was derived from or consisted in your orator's said patents. And your orator avers that the assessment for taxation so as aforesaid made in each of said years was, except as to the value returned by your orator in each of said years other than said Letters Patent, **based solely and exclusively upon the value as estimated by said county board of review and said State board of tax commissioners of said Letters Patent** and of said capital stock as derived from said Letters Patent, and *not* upon any other or different value or property. All to the great and manifest wrong, damage and injury of your orator, and in defiance of your orator's rights in the premises, and in violation of the Constitution and laws of the United States.

The prayers of the bill (p. 16) are for relief from any assessment and valuation for taxation of complainant's letters patent made *directly* or *indirectly* by the defendants, or either or any of them.

If the facts thus pleaded do not raise a Federal question, it seems difficult to imagine how such a question could be raised, or upon *what* facts a Federal question could be said to be predicated.

FEDERAL FRANCHISES NOT TAXABLE.

We now come to the main question:

I. Are Letters Patent of the United States taxable under State or Municipal authority?

This Court, by Mr. Chief Justice TANEY has declared:

> *The Powers of the General Government, and of the State, although both exist and are exercised within the same territorial limits, are yet separate*

and distinct sovereignties, acting separately and independently of each other, within their respective spheres.

Ableman v. *Booth*, 21 How. 506 (16 L. ed. 169).

And Mr. Chief Justice MARSHALL said:

All subjects over which the sovereign power of a State extends, are objects of taxation; but those over which it does not extend, are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident.

McCulloch v. *Maryland*, 4 Wheat. 429 (4 L. ed. 607.)

Section 8 of Article 1 of the Constitution of the United States, enumerating the powers of Congress, includes that:

> To promote the progress of science and useful arts, by securing for limited times to authors and inventors the **exclusive** right to their respective writings and discoveries.

In pursuance of the authority thus given, Congress has enacted laws under which Letters Patent for new inventions are granted to inventors or their assignees:—and that section pertinent to the present inquiry reads in part as follows:

> SEC. 4884. Every patent shall contain . . . . . a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the **exclusive** right to make, use, and vend the invention or discovery throughout the United States, and the Territories thereof.

Quoting from the grant forming part of one patent so issued, we find that the form adopted agrees with the Constitution and the statute:

> Now therefore these LETTERS PATENT are to grant unto the said The Indiana Manufacturing Company, its successors or assigns, for the term of seventeen years from the twenty-seventh day of March, one thousand eight hundred and ninety-four, the **exclusive** right to make, use and vend the said invention throughout the United States and the Territories thereof.

It will be observed that the word used in the Constitution, in the Act of Congress, and in the Patent itself, is the

word "EXCLUSIVE." A patent is a *franchise*,—an **exclusive** franchise,—to the inventor or his assignee. It is his to enjoy freely, and, like other franchises granted by the General Government, without any burdens or restrictions except such as are or may be imposed under the Constitution of the United States and laws of Congress made in pursuance thereof. Certainly such a franchise can not be subjected to the burdens of State or municipal taxation. The applicable decisions are believed to sustain this view.

In *California* v. *Central Pacific R. R. Co.*, 127 U. S., 1 (32 L. ed. 150), this Court, in considering a question essentially the same, say:

> how can it be *possible* that a franchise granted by Congress can be subject to taxation by a State without the consent of Congress? . . . . . Recollecting the fundamental principle that the Constitution, laws and treaties of the United States are the supreme law of the land, it seems to us **almost absurd** to contend that a power given to a person or corporation by the United States may be subjected to taxation by a State. The power conferred emanates from, and is a portion of, the power of the Government that confers it. To tax it is not only derogatory to the dignity, but *subversive of the powers*, of the Government, and *repugnant* to its paramount sovereignty.
>
> It is unnecessary to cite cases on this subject. The principles laid down by this Court in *McCulloch* v. *Maryland*, *supra*; *Osborn* v. *Bank of U. S.*, 22 U. S., 9 Wheat., 738, and *Brown* v. *Maryland*, 25 U. S., 12 Wheat., 419, and in numerous cases since which have followed in their lead, abundantly sustain the views we have expressed. It may be added that these views are **not in conflict** with the decisions of this Court in *Thomson* v. *Union Pacific R. R. Co.*, 76 U. S., 9 Wall., 579, and *Union Pacific R. R. Co.* v. *Peniston*, 85 U. S., 18 Wall., 5. As explained in the opinion of the Court in the latter case, the tax there was upon the property of the company, and not upon its franchises or operations. 85 U. S., 18 Wall., 35.

In the great case of *McCulloch* v. *Maryland*, 4 Wheat. 316, (4 L. ed. 579), Mr. Chief Justice MARSHALL, in delivering the unanimous opinion of the Court, said:

If we measure the power of taxation residing in a State, by the extent of sovereignty which the people of a single State possess, and can confer on its government, we have an intelligible standard, applicable to every case to which the power may be applied. We have a principle which leaves the power of taxing the people and property of a State unimpaired; which leaves to a State the command of all its resources, and which places beyond its reach, all those powers which are conferred by the people of the United States on the government of the Union, and all those means which are given for the purpose of carrying those powers into execution. We have a principle which is safe for the States, and safe for the Union. We are relieved, as we ought to be, from clashing sovereignty; from interfering powers; from a repugnancy between a right in one government to pull down what there is an acknowledged right in another to build up; from the incompatability of a right in one government to destroy what there is a right in another to preserve.

. . . . . .

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance, in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositiôns not to be denied.

. . . . . .

If we apply the principle for which the State of Maryland contends, to the Constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the States. The American people have declared their Constitution, and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the States.

If the States may *tax* one instrument, employed by the government in the execution of its powers, they may tax *any and every other* instrument. They may tax the mail; they may tax the mint; **they may tax patent-rights**; they may tax the papers of the custom-house; they may tax judicial process; they may tax

> all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States.
>
> . . . . . .
>
> The Court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have *no power*, by *taxation* or otherwise, to retard, impede, *burden*, or in any manner control the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the Constitution has declared.

See also *Osborn* v. *Bank*, 9 Wheat., 738 (6 L. ed. 204.)

Federal Courts are not alone in these views. The non-taxability of patents has several times been recognized and declared by State courts.

The Supreme Court of the State of Michigan, speaking by Judge COOLEY, has expressly recognized and declared that:

> Any State legislation which undertakes to limit or restrict in any manner the privilege which the Letters Patent confer is an *invasion* of the sphere of national authority, and therefore *void*.
>
> *People* v. *Russell*, 49 Mich., 617.

In this case they cited with approval *Cranson* v. *Smith*, 37 Mich., 309, in which it was said:

> In those cases where the congressional power is lawfully exercised, it is *supreme*.
>
> . . . . . .
>
> The Constitution of the United States not only allows but favors the special protection of inventors. The measure of that protection, and its conditions, can not be fixed by any power but Congress, and the remedy for abuses or defects in the legislation of that body must be found in its own revision of its own laws. It is not competent for State statutes to deal with them or to revise the national policy.

For other decisions by State courts of last resort see *post*, (pp. 18–21), where decisions from New York and Pennsylvania are quoted from and discussed.

The subject of interstate commerce has given rise to many questions which bear a strong analogy to those now under consideration, and which this Court has been called upon to consider.

In the case of *Robbins* v. *Taxing District of Shelby County*, 120 U. S. 489 (30 L. ed. 694), this Court said:

> Certain principles have been already established by the decisions of this Court which will conduct us to a satisfactory decision. Among those principles are the following:
>
> . . . . . .
>
> 2. Another established doctrine of this Court is that, where the power of Congress to regulate is exclusive, the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions;
>
> . . . . . .
>
> 3. It is also an established principle, as already indicated, that the only way in which commerce between the States can be legitimately affected by State laws is when, by virtue of its *police power*, and its jurisdiction over persons and property within its limits, a State provides for

—various matters not necessary here to enumerate.

Applying these principles to the present case, it may be said that the power of Congress respecting patents under the Constitution has been exercised, and it having failed "to make express regulations" respecting the taxation of patents, "indicates its will that the subject shall be left free from any restrictions or impositions"; subject, nevertheless, of course, to the *police power* of the States, as held by this Court in *Patterson* v. *Kentucky*, 97 U. S., 501 (24 L. ed. 1115), and in *Webber* v. *Virginia*, 103 U. S., 344. (26 L. ed. 265.) In the latter case the following language is used:

> It is only the right to the invention or discovery, **the incorporeal right,** WHICH THE STATE CAN NOT INTERFERE WITH.

In the case of *Philadelphia & Southern Mail Steamship Co.* v. *Pennsylvania*, 122 U. S., 326 (30 L. ed. 1200), this Court, in further discussion of these questions, used the following language:

> In view of the decisions of this Court, it cannot be pretended that the State could constitutionally regulate or interfere with that commerce itself. But taxing is one of the forms of regulation. It is one of the *principal* forms. Taxing the transportation, either by its tonnage, or its distance, or by the number of trips performed, or in any other way, would certainly be a regulation of the commerce, a restriction upon it, a burden upon it. Clearly, this could not be done by the State without interfering with the power of Congress. Foreign commerce has been fully regulated by Congress, and any regulations imposed by the States upon that branch of commerce would be a palpable interference. If Congress has not made any express regulations with regard to interstate commerce, *its inaction*, as we have often held, *is equivalent to a declaration that it shall be free, in all cases where its power is exclusive; and* **its power is necessarily exclusive whenever the subject matter is national in its character and properly admits of only one uniform system.**
>
> . . . . . .
>
> **Nor does it make any difference whether such commerce is carried on by individuals or corporations.**
>
> . . . . . .
>
> The corporate franchises, the property, the business, the income of corporations created by a State may undoubtedly be taxed by the State; but *in imposing such taxes care should be taken not to interfere with or hamper, directly or by indirection*, interstate or foreign commerce, **or any other matter exclusively within the jurisdiction of the Federal Government.**

In *Leloup* v. *Port of Mobile*, 127 U. S., 640 (32 L. ed., 311), this Court stated that "upon the fairest and most just construction of the Constitution"

> no state has the right to lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress.

So we say that a State has no right to lay a tax on patent rights "in any form," whether directly upon the patents themselves, as required by the Indiana statute, or upon the stock of a corporation issued for and representing such patents, for the reason "that such taxation is a burden" upon the Federal franchise granted by the Government of the United States, "and amounts to a regulation of it, which belongs solely to Congress."

In *Crutcher* v. *Commonwealth of Kentucky*, 141 U. S., 47 (35 L. ed., 649), this Court said:

> We have repeatedly decided that a State law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it.

We say here "that a state law is unconstitutional and void" which requires a party to pay a tax on a patent right, directly or indirectly, "no matter how specious the pretext may be for imposing it."

Attention is also called to the case *In re Sheffield et al.*, 64 Fed. Rep., 833. In this case the defendants, Sheffield and Edmunds, were arrested in a prosecution for selling patent rights without payment of a *license* ***tax*** prescribed by a statute of the State of Kentucky. The prisoners were taken before the United States Court at Louisville, on a writ of *habeas corpus*. Judge BARR discharged the petitioners, and, in the course of his opinion, made the following pertinent statements:

> Thus the question must be, can a State tax, or authorize a county or city to tax, a right—an incorporeal right—which is granted by the United States, and which, under the Constitution, can alone be granted by the United States? We think that question must be answered in the negative, under the principle settled in the case of *McCulloch* v. *State of Maryland*, 4 Wheat., 316, and the many subsequent cases.
>
> . . . . . .
>
> But **the patent right itself,** *i. e.* the right to exclude all others from the manufacture, use, or sale of the invention or discovery, which is a grant by the United States, **can not be taxed by a State.**
>
> . . . . . .

We conclude the statutes of Kentucky, under which the petitioners, Sheffield and Edmunds, are prosecuted and imprisoned, are *unconstitutional and void.*

It is very gratifying to counsel to find, in a decision written since the greater portion of his brief was originally prepared, such a literal and exact concurrence with his views.

It is no new thing for the State of Indiana to attempt illegal forms of taxation. In 1873 it was attempted to tax the gross receipts of transportation companies. In June, 1876, Judge DRUMMOND decided that law unconstitutional.

Indiana v. *American Express Co.*, 7 Biss., 227; Fed. Cas., No. 2,071.

This brief so far has proceeded upon the assumption that the taxation complained of will be, under the allegations of the bill, treated as though made upon the patents, in effect and actually, if not nominally.

It is, however, anticipated that a strenuous effort will be made to differentiate between appellant's patents and stock, and to make it appear that in nominally taxing the latter appellees have succeeded in evading conflict with United States law. This leads us to a particular discussion of the *form* of question suggested near the beginning:

II. Is the stock of a corporation which consists wholly of Letters Patent of the United States, taxable as stated?

The authorities seem to be quite as clear on this form of the question as on the other. While the exact question involved and in the form here presented has probably not before been passed on by a Federal Court, it seems to have several times been before the Courts of last resort of some of our more important States, and has by them been most carefully considered with substantially uniform result.

The Michigan cases have already been referred to.

The case of *Commonwealth* v. *Edison Elec. Lt. Co.*, 157 Pa. St. Rep., 529, is believed to be absolutely on "all fours" with the present case, and clearly and conclusively decisive of the question. The decision is short, and reads as follows:

GREEN, J. The fourth finding of fact by the learned Court below, which is fully sustained by the testimony, declares that "thirty-five thousand dollars in cash and three thousand shares of stock were issued and paid by the defendant company to the Edison Electric Light Company of New York, for certain rights under its patents within the City of Philadelphia, and that without these rights the defendant could not carry on its business and furnish electric light to its customers." Also that "in consideration for said cash and stock paid to the Electric Light Company of New York, the defendant did not receive any tangible property whatever, but merely certain intangible rights or licenses under said letters patent." Also that "the defendant does not lease from any persons from whom said licenses were obtained any tangible property whatever, nor does it have in its possession any tangible property belonging to said persons."

This state of facts brings the case within the principle that **capital stock invested in patents or patent rights is not taxable under State laws,** as established by our decisions in the cases of

Commonwealth v. *Westinghouse Electric Co.*, 151 Pa. St., 265;

Commonwealth v. *Westinghouse Air Brake Co.*, 151 Pa. St., 276; and

Commonwealth v. *Philadelphia Co.*, 157 Pa. St., 527, in which the opinion has just been filed.

We are therefore of the opinion that the learned Court below was right in its ruling.

Judgment affirmed.

It may be said that in the Pennsylvania cases only a *part* of the stock was issued for the patents, and was, therefore, non-taxable. Counsel for appellant is unable to observe the distinction. *All* the stock *which* ***was*** *issued for patents* was held not to be taxable, and there is no intimation in the decision that if *all* the stock had been so issued that any different rule as to the remainder of it would have been recognized. In the case at bar, in fact, and according to the record, every dollar of the stock was issued for the patents, and for nothing else.

This matter has also, since the present litigation was begun, been the subject of adjudication in the courts of the State of New York.

September 7, 1897, the Supreme Court, Appellate Division, Second Department, in the case of *People ex rel. Edison Electric Illuminating Co. of Brooklyn* v. *Board of Assessors of City of Brooklyn*, held that stock of a corporation issued for patent rights was not taxable. In that case it was said:

> The relator, an electric light company, by its return to the board of assessors, and the evidence of its officers given before that board, showed that its capital stock was $3,750,000, all of which had been paid in in money, except the sum of $945,000, which was paid for patent rights.

The whole capital stock had been assessed for taxation, including that "paid for patent rights."

The Court, after giving the particulars, further said:

> On a review of the proceedings of the board of assessors by *certiorari*, an order was made by the special term wholly vacating the assessment. From that order this appeal is taken.
>
> We think the order of the special term correct. It is true that the market value of the share stock of the relator was par or better. This may have justified the conclusion that, in a certain sense, the stock of the relator was not impaired; but it did not justify, *in the face of positive evidence to the contrary*, the assumption that the capital stock, even if unimpaired, was represented by assets or property which, under the law of this state, are subject to local assessment. The exclusive privilege or franchise, under *Letters Patent of the United States*, acquired by the relator for the sum of $945,000, and carried by it at that value *was not subject to state or local taxation.*
>
> . . . . . .
>
> The order appealed from should be affirmed, with $10 costs and disbursements. All concur.
>
> 46 New York Supplement, 388.

An appeal was taken from the Supreme Court to the Court of Appeals of the State, which, on October 4, 1898, affirmed the decision of the Supreme Court, and, in the course of the opinion, said:

> The Constitution of the United States (article 1, § 8, subd. 8) conferred upon congress the power to "promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the ex-

clusive right to their respective writings and discoveries." In pursuance of this power, congress enacted that patents should be issued to inventors, which should secure to them for a limited term the "exclusive right to make, use and vend the invention or discovery throughout the United States and the territories thereof." Rev. St. U. S., § 4884. Patent rights are, therefore, granted under the Federal Constitution, and necessarily for the promotion of Federal purposes. *Grant* v. *Raymond*, 6 Pet., 218, 241; *Ames* v. *Howard*, 1 Sumn., 482, Fed. Cas. No. 326; *Blanchard* v. *Sprague*, 3 Sumn., 535, Fed. Cas. No. 1,518.

The Federal purpose is primarily to stimulate genius, talent, and enterprise by holding out that encouragement which patents give, but ultimately to secure to the whole community the great advantages that flow from the free communication of secrets, processes, and machinery. The next step is that, *patent rights being created under the Federal Constitution and laws for a Federal purpose, the States are without the right to interfere with them.* The right to tax a Federal agency constitutes a right to interfere with, to obstruct, and even to destroy the agency itself, for, conceding the right of the State to tax at all, then it may tax to the point of destruction.

. . . . . .

The Federal government having the right to create the agency, it necessarily has the right to protect it, not only from destruction, but from interference from any other government, whether such interference be in the guise of taxation, or otherwise, as the power to tax involves the power to destroy, and the power to destroy may render useless the power to create.

. . . . . .

The order should be affirmed. All concur. Order affirmed.

156 N.Y., 417; 51 Northeastern Reporter, 269.

The reasoning of the foregoing opinion is logical and consistent, and is believed to be conclusive.

If it should be suggested that capital stock, although paid up exclusively by the transfer of letters patent to the company, might have a value in excess of that of the letters patent, which excess value would be taxable, while all this might be conceded, yet in this case it would not avail appel-

lee. The complaint avers that the value of the letters patent was taken into consideration in ascertaining the value of the capital stock. The assessment does not separate the amount based upon the value of the letters patent, from the amount, if any, based upon a value in excess of that of the letters patent. Under such circumstances the assessment is void as an entirety.

This was held in *Santa Clara County* v. *Southern Pacific R. R. Company*, 118 U. S., 394 (30 L. ed. 118), and upon the authority of this case by the Supreme Court of Indiana in *Hart* v. *Smith*, 64 N. E. Rep., 661.

THAT WHICH CANNOT BE DONE DIRECTLY CANNOT BE DONE INDIRECTLY.

Certainly the taxation of the stock of a corporation can, at the most, only be said to be an indirect taxation of the property of the corporation of which the stock is composed. We are not dealing now with cases where there is a special tax on stock certificates, or an arbitrary tax on the corporation for the privilege of existing, which are widely different matters.

This Court, in the case of *Handley* v. *Stutz*, 139 U. S., 417, although in another connection, defined the relations of stock and property represented thereby, saying:

> The stock of a corporation is supposed to *stand in the place* of actual property of substantial value, and as being a convenient method of representing the interest of each stockholder in such property.

It seems hardly necessary to cite authorities for the proposition that that which can not be done directly can not be done indirectly. However, the following cases, controlling of the question, which also involve illegal taxation, are called to attention.

In the "License Cases," 5 How., 504 (12 L. ed. 256), Mr. Chief Justice TANEY, in discussing the power of taxation by a State of imports, said:

> It can not be done directly, in the shape of a duty on imports, for that is expressly prohibited. And as it can not be done directly, it could hardly be a just and sound construction of the Constitution which would enable a State to accomplish precisely the same thing under another name, and in a different form.

In *Brown* v. *Maryland*, 12 Wheat., 419 (6 L. ed. 678), the Court said:

> But if it should be proved that a duty on the article itself would be repugnant to the Constitution, it is still argued that this is not a tax upon the article, but on the person. The State, it is said, may tax occupations, and this is nothing more.
>
> It is impossible to conceal from ourselves that this is varying the form, without varying the substance. . . . All must perceive that a tax on the sale of an article, imported only for sale, is a tax on the article itself. . . . . So, a tax on the occupation of an importer is, in like manner, a tax on importation. It must add to the price of the article, and be paid by the consumer, or by the importer himself, in like manner as a direct duty on the article itself would be made. This the State has not a right to do, because it is prohibited by the Constitution.

In *Crandall* v. *Nevada*, 6 Wall., 35 (18 L. ed., 745), it is said:

> It is claimed by counsel for the State that the tax thus levied is not a tax upon the passenger, but upon the business of the carrier who transports him.
>
> If the act were much more skillfully drawn, to sustain this hypothesis, than it is, we should be very reluctant to admit that any form of words which had the effect to compel every person traveling through the country by the common and usual modes of public conveyance to pay a specific sum to the State, was not a tax upon the right thus exercised.

In *Philadelphia & Reading R. R. Co.* v. *Pennsylvania*, 15 Wall., 232 (21 L. ed., 146), it is said:

> It is of national importance that over that subject there should be but one regulating power, for if one State can directly tax persons or property passing through it, or tax them indirectly by levying a tax upon their transportation, every other may, ... It was to guard against the possibility of such . . . . embarrassments, no doubt, that the power . . . . was conferred upon the Federal government.

A PATENT IS A CONTRACT.

The Constitution of the United States, Section 10, Article 1, says:

> No State shall . . . . pass any . . . . law impairing the obligation of contracts.

A patent is a contract, existing between the inventor on the one hand, and the general public on the other; and is entered into under the Constitution and Laws of the United States. The consideration to the inventor is a temporary monopoly. The consideration to the public is the clear disclosure of the invention, and its free use when the monopoly —or patent—has expired.

Whitney v. *Emmett*, Baldw., 303; 1 Robb Pat. Cas., 567; Fed. Cas. No. 17,585;

Kendall et. al. v. *Winsor*, 21 How. 322 (16 L. ed. 165.)

The contract in question is of a high character,—being by no less a party than the people of this great nation, acting in their sovereign capacity, who have solemnly granted the rights in question, for a consideration.

A Canadian authority states the matter admirably:

> It is universally admitted in practice, and is certainly undeniable in principle, that the granting of Letters-Patent to inventors is not the creation of an unjust or undesirable monopoly, nor the concession of a privilege by mere gratuitous favor; but a *contract* between the State and the discoverer.
>
> . . . . . .
>
> Invention being recognized as a property, and a ***contract*** having intervened between society and the proprietor for a settlement of rights between them, it follows that unless very serious reasons, deduced from the liberal [literal] interpretation of the terms of the contract, interpose, *the patentee's rights ought to be held as things which are not to be trifled with, as things sacred in fact,* ***confided to the guardianship and to the honor of the State and of the courts.***

Barter v. *Smith*, 2 Exch. Rep. of Canada, 455, at pp. 477-478.

To permit States or municipalities to levy taxes upon these contracts would impair the obligations which have been entered into by the Government, on behalf of the people, with the inventor or his assignee.

Moreover "the power to tax involves the power to destroy."

McCulloch v. *Maryland*, *supra*.

The statutes of the State of Indiana, under which the acts complained of were performed, clearly are in impairment of the obligations of these contracts, and are therefore unconstitutional and void.

The question is: Shall this State statute be permitted to impair the obligation of this contract by imposing additional burdens or obligations not called for by the contract itself, or by the Constitution or the statute of the United States under which the contract was entered into?

The second paragraph, Article VI, of the Constitution says:

> This Constitution, and the laws of the United States which shall be made in pursuance thereof, . . . shall be the Supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Possibly this matter may be lent a new emphasis by putting the inquiry in this form: Are State or County taxing officers, acting under color of State law, to be permitted to nullify (or annex any conditions to) a contract made by the whole people of this great country through their duly chosen and legally authorized representatives?

No Court has ever affirmed the proposition into which appellees' contention resolves itself. It remained for the Attorney-General of the State of Indiana, and other Indiana State taxation officials, to seriously contend for a proposition so absurd.

But no one in this country, however exalted in station or illustrious in character, is above the law. No State official can, in assuming the name of the State, shelter himself behind her sovereign immunity.

Southern Ry. Co. v. *North Carolina Ry. Co.*, 81 Fed. Rep., 595.

While the fact has not much bearing upon the present case, it may be well enough to state that patents are not such monopolies as are opposed to the policy of the law, as is established by the following authorities:

Allen v. *Hunter*, Fed. Cas. No. 225;
Atlantic Works v. *Brady*, 107 U. S., 203;
Stevens v. *Keating*, 2 Webs. Pat. Cas., 181;
WALKER on Patents, Sec. 152, p. 131;
Seymour v. *Osborne*, 11 Wall., 516;
CURTIS' Law of Patents, preliminary observations.

SUMMARY.

Our positions briefly stated, are—

1. That a patent ***can not*** be taxed by a State:

a. Because it is a Federal franchise not subject to State authority.

b. Because to do so would impair a contract. Furthermore, a contract to which the United States is a party.

2. That a patent ***ought not*** to be taxed, because:

a. It has no ascertainable value.

b. It expires in a limited time; after which—actually and potentially—its value is at an end.

c. Meantime its entire value has been measured by its earnings, and has gone into and become a part of the mass of ordinary property, which is taxable, and presumably is taxed.

3. That the capital stock of a corporation, issued for and representing a patent, is to all intents and purposes, the same thing as the patent itself.

4. That to tax such stock would be the same thing as taxing the patents for which it was issued.

5. That the statutes of the State of Indiana requiring the taxation of "patent rights" contravene Federal law, and are therefore void.

6. That the acts of appellees complained of, being based upon a void law, are also void, and without force or authority, and that acts in continuation thereof, or other acts of the same character, should be prohibited and enjoined.

It is respectfully submitted that the decree appealed from should be reversed and the cause remanded with instructions to the lower court to enter a decree in accordance with the prayers of the bill of complaint.

CHESTER BRADFORD,
for Appellant.

INDIANAPOLIS, INDIANA, September 5, 1902.

REPLY TO APPELLEES' BRIEF.

May it please the Court:

On pp. 5 to 13 of their brief appellees have collated their "points and authorities."

Appellant submits the following propositions as completing, explaining, qualifying or overcoming appellees' "points," and showing that the same, and the authorities cited in support thereof, are not to be held to lead to the result contended for by appellees' counsel.

(No. 1.)

Appellant has not a plain adequate legal remedy under the laws of the State of Indiana. The remedy, if any exists, is multiplex and uncertain.

pp. 31–41 *post.*

Irrespective of this, appellant had the right to resort to a Federal Court with its Federal question.

pp. 3–5 *ante*, pp. 61–63 *post.*

(No. 2.)

County Commissioners have no jurisdiction to disturb findings of the State Board of Tax Commissioners. The statutes giving them authority to refund taxes "wrongfully assessed" are a part of the *old* system which has been superseded by the new tax law, which, as appellees say in their brief (p. 60) "*provides* ***in itself*** *a* ***complete*** *and comprehensive system of taxation*"; and which repealed "all laws and parts of laws within the purview" thereof.

pp. 31–35 *post.*

Neither does this old statute provide for *all* taxes, as there are express statutes in respect to the refunding of *city* taxes (appellees' brief p. 32) by action of the City Clerk and Common Council.

pp. 36–38 *post.*

Besides, we had the right to go to the Federal Court with our Federal question, as above stated.

(No. 3.)

If the State's portion should reach the State Treasury it would be irrecoverable, and consequently the injury irreparable. There is no provision for such recovery in the "complete and comprehensive" tax law of Indiana—which has superseded the old tax law.

pp. 32–35 *post.*

Even if this be not so, a multiplicity of suits would result, as well as a multiplicity of proceedings not suits.

pp. 36–38 *post.*

Suits would not secure the return of the money. Legislative action, by the General Assembly of Indiana, and by the Common Council of Indianapolis, would have to be had.

pp. 36 and 38 *post.*

(No. 4.)

The bill *does* show that the Letters Patent were included in the assessment.

Record, pp. 3 to 15—especially, pp. 13–14.

These allegations are clear, comprehensive and unmistakable.

The authority of the taxing officers of Indiana does not extend over capital stock invested in or composed of Letters Patent of the United States. (See authorities herein at "No. 7" *post.*)

Brief pp. 60–61 *post.*

(No. 5.)

States, of course, have the power to tax *ordinary taxable property* so long as no discrimination is made, irrespective of how it is used; but they have no power to tax inherently non-taxable property at all.

They may tax the *tangible property* used in interstate commerce, but they can *not* tax the *right* to engage in such commerce.

They may tax a *machine* protected by a patent right, but they can *not* tax *the patent right itself.*

The taxation relating to wills and descents is "to be regarded as imposed, not on the bonds, but on the privilege of acquiring property by will or inheritance".

Plummer v. *Coler*, 178 U. S. at p. 134; 44 L. ed. 1008.

Taxation of "shares" and taxation of "capital stock" have been sharply distinguished by this Court.

pp. 63 *post.*

(No. 6.)

The fact that Letters Patent **"is a property that** may be sold, assigned, transferred by gift, sale, devise or judicial process and **under the provisions of the law of Indiana is taxable",** as is here stated by appellees' counsel, is precisely the occasion of this controversy.

These "provisions of the law of Indiana" are utterly and hopelessly unconstitutional, invalid and void; and any taxation thereunder is also utterly and hopelessly invalid and void.

(No. 7.)

If this particular capital stock which is invested in or consists of Letters Patent of the United States "is taxable under the laws of the State of Indiana" as here stated by appellees' counsel, then such laws are also utterly and hopelessly unconstitutional, invalid and void, under the repeated decisions of this Court.

Weston v. *Charleston*, 2 Pet. 449;

People v. *Commissioners of N. Y.*, 2 Black, 620 (17 L. ed. 451);

People v. *Commissioners of N. Y.*, 2 Wall. 200 (17 L. ed. 793);

People v. *Hoffman*, 7 Wall. 16 (19 L. ed. 57);

First National Bank v. *Kentucky*, 9 Wall. 353 (19 L. ed. 701).

pp. 82–84 *post.*

WAS THERE A REMEDY AT LAW.

Taxation within the State of Indiana is made under and by virtue of the provisions of an act of the General Assembly of the State of Indiana, "concerning taxation," approved March 6, 1891, and consisting of 260 sections, of which the 1st and 259th read as follows:

> SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That all taxes for the support of the government of this State shall be assessed on polls and on property listed and valued in an equal and ratable proportion (except such stocks and other prop-

erty as may be specifically taxed) in the following manner, namely: The amount necessary and proper to be charged on each poll and on each hundred dollars' worth of property, for State expenditures and for school purposes, shall, from time to time, be fixed by law; and the amount to be charged on each poll and on each one hundred dollars' worth of property, for county expenditures shall be determined by the Board of County Commissioners at their annual meeting in September.

SEC. 259. All laws and parts of laws within the purview of this act, including "An act to render uniform the assessments of personal property in the several townships of the different counties," approved March 8, 1889, are hereby repealed.

It is from this act that the liberal quotations in appellees' brief are made.

This act was passed by the General Assembly of the State of Indiana, after an elaborate consideration of the entire subject of taxation, and was meant to be a complete substitute for all theretofore existing statutory law upon the subject.

This law, it may be said, retained, copied and re-enacted much of the preceding statutory law; and it is clear that all preceding statutory law which was meant to be retained was thus retained.

That it was meant to supersede all preceding statutory law is clearly evidenced by the broad and comprehensive language of the repealing section above quoted.

The usual formula for a repealing section in the State of Indiana is this:

> "All laws, or parts of laws, in conflict with the provisions of this act, are hereby repealed."

The legislature in the present case were careful to substitute for the words "in conflict with the provisions of this act" the words "within the purview of this act," thus clearly indicating the legislative intent that this act should exclusively comprehend each and every matter within its purview, or in other words, "concerning taxation."

The law to which our attention has been called as a statute under which taxes wrongfully collected may be recovered, is the act of July 24, 1853.

As has been pointed out by appellees in their brief, there was, by the Act of 1891, created a body known as the State Board of Tax Commissioners, consisting of the Governor of the State of Indiana, the Secretary of State, the Auditor of State, and two persons called Commissioners, one appointed from each of the two opposing political parties, and to this Board appeals are to be taken by "any person, partnership, company, association or corporation dissatisfied with" the taxation originally made by the primary taxing authorities, as is fully shown in appellees' brief.

Now, is it supposable for a moment that it was the legislative intent, after creating this elaborate system of taxation and creating this appeal Board of such great dignity and composed of persons of such high authority, that thereafter any one of the ninety-two Boards of County Commissioners throughout the State of Indiana should have the power and authority to override or nullify the action of such a tribunal established by a law enacted nearly twenty years later than the law in question, and wherein the powers and duties on appeal are so elaborately and carefully prescribed?

But fortunately we are not left in doubt upon this proposition, nor are we required to ask this Court to originally decide the question.

Appellees have called attention to the rule laid down by this Court in *Adams Express Co.* v. *Ohio*, *165 U. S. 219*, that:

> construction by the State courts of last resort of State constitutions and statutes will ordinarily be accepted by this court as controlling,

and we have, in the recent case of *Hart* v. *Smith*, a unanimous decision by the Supreme Court of Indiana, not yet officially reported, but found in 64 N. E. Rep., pp. 661–667, a sufficient ruling to show the views of the Indiana Supreme Court upon this question.

In that case, after stating a proposition, the Supreme Court of Indiana say:

> But whether they had or no is a question of fact that the State Board—a body having quasi judicial powers—was required to determine; and if, without

fraud, that body has determined that such shares had a value, then this court has **no power to review** such conclusion.

Citing authorities.

"The determination of the value to be fixed on property liable to be assessed is not, in the absence of fraud, subject to the supervision of the judicial department of the State" . . . . . the Board . . . . "had jurisdiction to commit the error"; and its determination, however erroneous, cannot be impugned collaterally. Jurisdiction existing, any order or judgment is conclusive in respect of its own validity in a dispute concerning any right or title to be derived through, or anything done by virtue of, its authority.

In this same decision, further along, the Court makes this interesting statement:

Although such board is composed of men who, for the most part, otherwise occupy high official station, and although such board performs duties of very great importance to the State, yet such tribunal is nevertheless one of granted powers; and, if it acts without jurisdiction, the courts have the power to arrest the consequences of its acts.

Further along, quoting from *Senour* v. *Ruth*, 140 Ind., 318, the Court says:

"When we have found that the property was not within the jurisdiction of the State, we have found the absence of an element necessary to the validity of the board's action, and in such case the action is void, and may be attacked collaterally." The proposition that a court of equity will enjoin when there is *no jurisdiction*, finds support in the authorities without this State.

Citing numerous authorities.

Further along the Court, continuing the discussion, say:

We think that in a case of this kind it is not proper to apply the rule that obtains when a judgment is collaterally attacked,—that the infirmity must appear on the face of the record. These proceedings are summary, and, to a large extent, informal, and there are no pleadings that tend to make the question decided certain.

Now we come back to our original contention—that these State taxing officers had *no jurisdiction* of the matter here involved—viz., the taxation of patent rights.

It was, therefore, proper to proceed to enjoin these individuals from attempting to enforce such an assessment.

Appellant's proceedings, we contend, were right and regular under the circumstances, and that the conditions and circumstances of the cases cited by appellees render them wholly inapplicable as authorities upon the vital point herein presented.

We are relieved, we think, from any need of discussion of the Indiana Act of 1853, under which the case of *DuBois* v. *Board* was brought and decided. We think it was clearly repealed by the general taxation act of 1891. It must be considered so repealed by the Supreme Court of Indiana, else it would not, in the recently decided case of *Hart* v. *Smith*, *supra*, have declared in respect to a matter upon which the State Board has passed, **"this court has no power to review such conclusion."**

If we could go before the County Commissioners with a claim after the State Board had passed upon it, then inevitably we could also go to the Circuit Court of Marion County, and thence to the Appellate or Supreme Court of the State, according to the amount involved. Therefore, if the Supreme Court "has no power to *review*" the decisions of the State Board of Tax Commissioners, then the County Commissioners have *no power to* ***begin*** a course of proceedings which must inevitably at its conclusion come to a tribunal which has declared that it "has no power to review."

The foregoing seems conclusive. Further discussion of this branch of the case is therefore probably unnecessary. However, even supposing the 1853 statute to be still in force, appellees' contention founded thereon seems nevertheless to be unsound, for reasons which will presently appear.

The quotations from the Indiana tax law which are given near the beginning of appellees' brief present to the Court, in a general way, the procedure followed by the taxing officers in the State of Indiana.

Under the head "Refunding of Taxes," however, the quotations are not quite complete enough to present an adequate view of the procedure under the Indiana statutes. The method of procedure against the State after money has been paid into the State Treasury, is correctly quoted (page 31), but the character of the judgment, and the means of realizing on it, which appellees have not shown, are laid down in the following section:

> **Execution, non-issue of—judgment bear interest. 6.**—Whenever by final decree or judgment of said Superior Court of Marion County, Indiana, or the Supreme Court, a sum of money is adjudged to be due any person from the State of Indiana, *no execution* shall issue thereon, but said judgment shall draw interest at the rate of 6 per cent. per annum from the date of the adjournment of the next ensuing session of the General Assembly until an appropriation shall have been made by law for the payment of the same, and said judgment paid.

The procedure which has been suggested to us, as the plain, simple, complete and adequate remedy at law, therefore includes, if all these Indiana statutes are to be followed, the following steps:

(1). An appeal from the Marion County Board of Review to the State Board of Tax Commissioners.

As by far the larger part of the taxes complained of were ordered to be levied by this same State Board of Tax Commissioners, after hearings on appeals taken (or procured to be taken) by appellees' counsel, it is difficult to see what benefit could have been secured by appealing in the other years. The law does not require an obviously useless and futile thing to be done. Even tender of performance is unnecessary when it is reasonably certain that the offer will be refused.

Hills et al. v. *National Albany Exchange Bank*, 105 U. S. 319; 26 L. ed. 1052.

The City of Indianapolis v. *Vajen*, 111 Ind. 245.

(2). That afterwards we should have paid the demand and filed a petition with the Board of County Commissioners for Marion County for an order to refund the illegal taxes.

Just what hope there would be of securing such an order, after the question had been thrashed out, as it had been, before the Marion County Board of Review, and before the State Board of Tax Commissioners, in proceedings in which the Attorney General of the State, as well as the County Attorney, had participated, it is a little difficult to state.

(3). That upon the denial of the petition of the Board of County Commissioners we should have commenced a proceeding in the Circuit Court of Marion County.

It may be conceded that if we had taken the course suggested and reached this point, we should (if the statute of 1853 is yet in force) have had a trial in a court, and we know of no particular reason why, in such a trial, we should anticipate defeat. Nevertheless, the questions are such as should, and probably would, have been finally brought to this Court; and the advantage of our procedure is that we have come direct. If the 1853 statute is invalid, as we think, then no effective trial could be had at all.

(4.) From the Circuit Court of Marion County it appears we should have by the next step gone to the Appellate Court (or Court of Appeals) for Indiana, as (if the case of *DuBois* v. *Board* is a precedent) this seems to be within the class of cases which have gone to that Court. Probably, however, the questions presented would enable this to be taken to the Supreme Court of the State of Indiana; and it would seem to be necessary to have a ruling upon the question by that Court before coming here, as writs of error, under Sec. 709 Revised Statutes, seem only to be obtainable in the case of "a final judgment or decree in any suit in the *highest* court of a State."

(5.) Thence we could have come by appropriate proceedings to this Court.

(6.) We also, under the statutes which have been quoted, would, as we think, have been obliged to bring a suit in the Superior Court of Marion County, sitting as a court of claims.

(7.) If successful there, we should have had to await a *legislative* appropriation. In other words, the enactment of a *new* law. If not successful, then a course of appeals, similar to that provided for from the Circuit Court of Marion

County in the proceeding instituted after action by the Board of County Commissioners, would seem to have been necessary, if judgments in such cases are appealable at all.

(8.) Then, as pointed out by appellees in their brief, for the city's portion of the taxes we should have had to go to the *common council of the City of Indianapolis.* It is not suggested by appellees how, if the common council of the city should fail to recognize and allow the claim, we should proceed to recover the portion paid the city, which (it may be remarked) is by far the larger portion. It is obvious, however, that a suit would be necessary, and a series of appeals, running from the trial court to this court.

It seems to appellant that this makes clearly manifest the troublesome character of the proceedings to which appellant would have been subjected by any other course than that which has been pursued.

Applying the rule with the greatest strictness, therefore, appellant says that it is abundantly shown that the *multiplicity*, *complexity* and *circuity* of litigation which would result from following any other course than that which has been pursued, fully justifies that course, and fully warranted appellant in proceeding in equity instead of at law, no proceeding at law being cognizable in a United States Court.

This independent of the reasons (perhaps sufficiently set forth in the original brief) based upon appellant's right, as it claims, to have its Federal question tried in a Federal court.

The authority on which appellees most rely seems to be the case of *DuBois* v. *Board*, 10 Ind. App. 347.

Now (it may be well at this juncture to remark) court opinions are authority in circumstances identical with those upon which such opinions are based. Such an opinion rests upon the facts of the particular case and can not be applied to all cases promiscuously.

The facts in *DuBois* v. *Board* were that DuBois had, for a series of years (from 1881 to 1889), returned his credits for taxation and had placed his estimate of values upon such credits. This estimate of valuation had been accepted by the Assessor of Lake County, Indiana, and DuBois had paid his taxes in full upon that assessment and valuation. In 1889

the Board of Commissioners of Lake County made a contract with an individual called "Fant the Ferret" to *discover* omitted taxes, on a basis of twenty-five per cent. of the amounts. Fant "discovered" that it appeared by the mortgage records of Lake County that DuBois held mortgages against sundry parties during all the years in question whose *face values* were greater than the valuation returned for taxation. Thereupon the balance of value between the amounts returned and the face of these mortgages was assessed as "omitted" taxes. There was no evidence showing that these mortgages were in fact worth any more than they had been assessed at. Irrespective of this, however, the court held that the assessment having once been made by lawful authority upon the particular property in question, there thereafter existed no right on the part of anybody to make a different assessment upon that property; and that to attempt to list a *difference* between the one valuation and the other, as omitted property, was to attempt to do by indirection what could not be done directly. A more flagrant case of attempted injustice on the part of a "tax ferret" working on a percentage probably does not appear in the books. This case was before the Appellate Court twice. The original report is in 4 Ind. App. 376. There was a companion case which was heard at the same time and in which the principal opinion was rendered. In this case, *Donch* v. *Board*, 4 Ind. App. 374, the Court said:

> When the amount which shall be paid for the support of Government because of the ownership of particular property has been fixed by a method prescribed by law, that must be regarded as the amount demanded by the law, and it cannot be considered as otherwise than unjust and wrongful for an officer without authority in the premises to assume to change the requirement of the law and thereupon to collect a larger amount. The excess so exacted is property taken to which the Government never was entitled in contemplation of the law.

Now, this was a case clearly "wrongful" and so within the statute in question, and the procedure was probably proper. It was a case of "wrongful" taxation. We say our case does not come within this statute, for reasons which will presently appear. (pp. 40–41, *post*.)

It is an "elementary proposition that one who relies upon a statute for a right of action must make a case distinctly within its terms."

Board v. *Senn*, 117 Ind. 412;
Durham v. *Board*, 95 Ind. 183.

So he who asserts that a statute gives a remedy precluding the opposite party from resorting to a court of equity must make out that the case if so brought would be clearly within its terms.

Board, etc. v. *Armstrong*, 91 Ind. 528, was a case under the very section 5814 on which appellees rely, and under which the suits in *DuBois* v. *Board* and *Donch* v. *Board* were brought; and therein the Supreme Court of Indiana has defined and interpreted said section of the statutes. The Indiana Supreme Court said:

> Webster defines *wrongfully* as meaning: "In a wrong manner; unjustly; in a manner contrary to the moral law, or to justice." *Unlawfully* is not the full equivalent of *wrongfully*. A thing may be unlawful without being contrary to good morals, or to natural justice. *Wrong* is the opposite to *right*, whether considered with reference to strict law or the principles of equity. The word "wrongful," therefore, has a much broader and stronger meaning than the word "unlawful."
>
> The plain inference appears to us to be that a tax may be *irregularly* and even *unlawfully* assessed without inflicting a *moral wrong* or an injustice upon the owner or holder of the property upon which the tax is charged.

The italics are the Court's.

Now, this definition would seem to exclude parties from the benefit of this law except in cases where the collection of the unlawful tax involved a moral wrong. Appellant has never charged appellees with *moral* wrong in this matter, nor has it supposed they would assume the attitude of being *morally* wrong in order, by a technicality, to win their case. They acted (appellant has always assumed) in good faith under the requirement of a statute of the State of Indiana, which, if valid, they are bound to obey, and concerning the validity of which they are not expected to pass judgment.

Courts, and not taxing boards, are created for the purpose of interpreting and expounding constitutions and statutes. Any other tribunal may, of course, assume that a statute is unconstitutional, but if so, it is at their risk and peril.

It cannot possibly be the legal presumption that it was the right or duty of an administrative or executive officer to "at his peril" determine that the statutes of the State of Indiana were unconstitutional. In *Huntington* v. *Worthen*, 120 U. S. 97 (30 L. ed. 588), it appears that a tax collector had ruled that a certain statute was unconstitutional. This Court, having found the statute actually unconstitutional, did not disturb the work of the tax collector based upon his ruling. But so far from determining that it had been his *duty* to so find, it said:

> It may not be a wise thing, as a rule, for subordinate executive or ministerial officers to undertake to pass upon the constitutionality of legislation prescribing their duties, and to disregard it if in their judgment it is invalid. This may be a hazardous proceeding to themselves, and productive of great inconvenience to the public; but still the determination of the judicial tribunals can alone settle the legality of their action.

In other words, this Court in this instance excused what, "as a rule," it declared not wise.

VALUE IMMATERIAL IF PROPERTY NON-TAXABLE.

Now we are criticised because the tax returns have not been made to show the value of these patents. It is attempted to be argued that in the absence of a showing that the patents were worth as much or more than the large sums assessed against this corporation that therefore it must be that the taxation was upon other things. And it is attempted to argue also that because the first returns which were made in the early days of the company, before any profit whatever had been made in the conduct of its business, showed the four patents then returned to be worth only $25,000, that that is the entire value of the patents throughout all the succeeding years, notwithstanding the express declination of appellant to in those years return its patents at all or place

any value whatever upon them. Now it may be said that in the earlier returns, the officers of the company, acting without legal advice, and in ignorance of their legal rights, did return their patents at that time at the sum of $25,000; and the taxation at that time—viz., $36,000—was subsequently the value of the tangible property added to this valuation of the patents. But subsequently, when the operations of the company had become extended, and more patents had been acquired, they took legal advice, and thereafter, acting as they believed within their rights, declined to return the patents at all or to place any value upon them. It is immaterial, as we hold, whether the patents are worth one dollar; one thousand dollars; twenty-five thousand dollars; one hundred thousand dollars; one million dollars, or ten million dollars. They have no *taxable* value at all.

Appellees have cited the case of *Central Pacific R. Co. v. State of California*, 162 U. S. 91 (40 L. ed. 903.) We call attention to the following language from p. 114:

> It is said that plaintiff in error should not be bound by this statement because it was on printed blanks prepared by the board, but when plaintiff in error filled out and swore to the statement of its property "as being subject to taxation," and the blank form called on plaintiff in error to give a statement of the value of its franchise within the State for the purpose of assessment and taxation, if it had intended to claim that its State and Federal franchises were so merged as to render the former not subject to taxation, or that it had no franchise subject to taxation, it was its duty to so indicate in making the return. Nothing in the law and nothing in the blank form could have compelled it to make a statement contrary to the facts.

As we intended to claim that these patents were not subject to taxation, we believed it to be our duty to so indicate in making the return. That we were right in this course seems to be conclusively established by this authority. The patents may be conceded to be of even greater value than the assessment which was placed upon them; but if patents are not taxable, this is immaterial, and moreover it was a matter

into which the taxing officers had no right to inquire. In short, it was none of their business.

That portion of appellees' brief (pages 5–6), therefore, where it is attempted to confuse the issue by comments upon the fact that the difference between the value ($25,000) returned for the patents owned by the company in 1893, and the value ($500,000) assessed upon the patents owned by the company in 1898 by the State Board of Tax Commissioners, is utterly fallacious. The bill shows (and its allegations, it must be remembered, are true, at least for the purposes of this case) that there is *no* "combination of money . . . . skill, energy and experience . . . and . other things" to "make up the value of the stock," but that the stock consisted **solely** of the Letters Patent of the United States. The facts of the record are not to be overcome by the wholly foundationless assertions of counsel.

"EO NOMINE."

At page 83 of their brief appellees say:

> Assuming, for the purpose of argument, that patents are not taxable, *eo nomine*, yet that would not preclude the state from taxing the stock of a purely domestic manufacturing company. This is one of the conditions upon which it came into existence.

This reference to patents "*eo nomine*" seems to indicate that in appellees' estimation there are some distinctions to be drawn by varying nomenclature. "A rose by any other name would smell as sweet," and we have no apprehensions that this Court will indulge in any such hair-splitting distinctions. We are entitled, we think, both from the high character of the Court, and from the lessons to be drawn from many of its written opinions, to consider that substance and not mere verbal form is chiefly regarded, and that justice is not to be defeated by a change of appellation.

COMPLIANCE WITH INCORPORATION ACT.

In the continuation of their argument beginning with "To illustrate" (p. 84), there are several fallacies:

In the present case the record does not show any combination of capital and energies in appellant's business except in so far as the patents may be called capital. There is no

pretense here that appellant did not comply with all the terms of the incorporation act, or that the persons incorporated did not pay the regular charter or incorporation fee or tax. There is no pretense that they did not deliver to the assessor each year all statements and schedules required by the law, except that they declined to return their non-taxable patents for taxation; which is the very question here. There is no pretense that appellant did not pay all taxes demanded, saving and excepting the taxes levied on its capital stock, composed of patents.

Now in accepting the terms of the State of Indiana, acceptance was made of valid and lawful terms. No acceptance could possibly be held to have been made of unlawful and invalid terms. Appellant cannot be bound to submit to taxation of its patents because of the unconstitutional and void statute of the State of Indiana requiring the taxation of patents. Appellant and its stockholders have complied with and abide by the Indiana law, so far as the same is valid. Having accepted the benefits of the incorporation act, they *have* paid the consideration in good faith and to the uttermost farthing.

We do not permit appellees to go farther than we do in the sustaining of lawful authority, and we admit and accept, fully and unreservedly, the manner and method of taxation of our property, so far as the same is *lawfully* taxable at all.

But we must insist that appellees' statement falls short of a correct statement of the law, in this vital and essential particular. They should add, as we add, to all these conditions:

> *Subject, nevertheless, to the conditions that we are subject to pay taxes only on* ***lawfully*** *taxable property, and must submit only to the* ***valid*** *laws of the State.*

It is well to remember that the law of Indiana requiring the taxation of patent rights relates to all parties indiscriminately—persons, firms and corporations alike—and is not a special condition made a prerequisite to the granting of a corporate charter.

VALUE OF APPELLANT'S STOCK.

We also contend, as elsewhere more fully stated, that the present value of the stock, market or otherwise, can have no

possible bearing upon the questions at issue in this case. The corporation issued this stock for certain Letters Patent of the United States; and it is therefore a *representative* of these Letters Patent; and when it passes from hand to hand, and money or other property is exchanged therefor, the taxables are neither increased nor diminished, but are merely transferred from one person to another, while that other person transfers to the first simply his interest in the patents represented by the stock. Such a transfer does not affect the corporation in any way. The tangible property so exchanged or transferred is still subject to taxation to the same extent it previously was. And the stock has not lost its representative character.

There is also good *reason*, as well as good law, in support of our contention. To illustrate: A has a patent. B has $100,000. The patent is not taxable. The $100,000 is taxable. B buys A's patent and pays him the $100,000 for it. *A* now has the $100,000 and it is taxable to *him*. B forms a corporation and puts in his $100,000 patent, taking stock therefor. There is yet but $100,000. It has *not* become $200,000 because a corporation has been formed and certificates of stock have been issued. The money has not been multiplied by the change of hands. Neither B nor the corporation has it or any tangible property to represent it, and this being so, neither of them can be taxed upon this value. But the taxing power has lost nothing. The $100,000 still exists *in the hands of A*, and is still taxable at the *same rate* and to the *same extent* as originally. The patent, presumably, of course, has a value, but that value consists wholly in the franchise or monopoly which has been granted by the Government of the United States. The presumption may or may not be correct. If it should turn out *not* to be correct, then, under the theory of appellants, the purchasers would not only lose the $100,000 which they had paid for this supposedly valuable but really worthless thing, but would also be continually taxed because they had done so. If the presumption should be correct, however, this value would soon begin to manifest itself in the form of tangible property (growing out of profits upon the business conducted under the franchise, or monopoly), and this tangible

property so resulting *would* be taxable and in this way the patent—the privilege—the monopoly—the franchise—although not itself taxable, still is the means of producing taxables. These taxables so produced must represent the full actual value of the patent. It is impossible—for the reason, among others, that its life is limited (sometimes by adverse court decisions to a very short period)—that a patent should be worth any more than the money or other property that actually results from its use, which property, as soon as produced, enters into the body of taxables and thus it contributes its full share to the support of the government. To tax it in any other manner, or to any greater extent, would be unreasonable and unjust, as well as unlawful.

When the corporation paid $100,000 for the patent, the officers doubtless thought or believed that they would make at least that much from it. Nevertheless, the corporation did not have one dollar of actual tangible value in hand because of that belief. And to tax them upon that amount, as though they had the money in hand, is an absurdity, as well as illegal. If *beliefs* are to be taxed, why not tax him whose mental processes have been disturbed and whose hallucination, in strange contrast to his surroundings, is that he is worth $1,000,000 upon that amount?

I repeat: A patent is not tangible property, or taxable; its value cannot be determined in advance; and it is or may be valuable, or not, as it is, or is not, profitably operated. Furthermore, if a patent proves profitable in operation the proceeds are taxed the same as other property, and bear their full share of the public burdens. And again, the actual value of a patent cannot exceed the amount which is realized from its exploitation during its lifetime. In and of itself it has and can have no value whatever. Any valuation of it is mere guess work—bald speculation.

TAXABILITY OF PATENTS.

People, etc. v. *Campbell*, 138 N. Y. 543.—Is a case much relied upon by appellees. It is to be regretted that they did not quote from it more fully. We will supply some of the deficiencies:

The *official reporter's* summary of the contention of appellant contains the following:

> The capital stock of the relator invested in Letters Patent of the United States and of *other countries* in North and South America is not liable to taxation here, *except* in so far as the said Letters Patent of the United States *apply to the territory within the State of New York.*

The point of this case, therefore, that patents are not taxable at all, was not made in that case. Courts do not commonly decide points not presented for decision.

The Court (by EARL, J.), near the beginning of the opinion, shows that its understanding of the question to be decided was the same as is appellant's, by saying:

> The relator does not complain that the value placed upon its capital was too high. But *it claims that none of it was employed within the State,* and hence, that none of it could be the basis of taxation under the act, and *whether* ***this claim*** as to the entire capital or any portion of it *is well founded is the* ***sole matter*** *for our determination.*

The New York Court of Appeals did *not*, in *People* v. *Campbell*, pass upon the question now before us, because no such question was there raised to be passed upon.

The case of *Crown Cork & Seal Co.* v. *Maryland*, 87 Md. 687, which is so elaborately quoted from and discussed by appellant's counsel, brief pp. 86–91, is easily to be distinguished from the present case. In that case it appears that the corporation *purchased* patent rights. It does *not* appear that the stock was issued for the patent rights. There is a wide difference between the two cases. In the one case the stock is solely the representative of patents, and nothing else. In the other case, the patents having been purchased *subsequently* with cash, have no necessary direct connection with the stock.

In the *Crown Cork & Seal Co.* case, also, appellee submits, with all due respect, that the Court's opinion contains much that is unsound, both in law and in logic. Its remarks, so far as they bear directly upon the questions presented here, are also largely in the nature of *obiter dicta*.

The Court (at p. 698) itself says:

> It will remain *for future consideration* whether a patent right may not of itself be a proper subject of taxation, but that as just stated is *not* a question necessary to be decided on this appeal.

Distinguishing further, it appears, by the opinion of the Court (at p 696), that in Maryland—

> the tax is *not* a tax upon the stock or upon the corporation, but upon the owners of the *shares* of stock, though the officers of the corporation are made the agents of the State for the collection of the State tax.

For the distinction between "capital stock" and "shares," see *Owensboro National Bank* v. *Owensboro*, *post* (p. 63).

The Court further declares (at p. 700) that the rule in Pennsylvania that "the tax being upon the capital stock, it is a tax upon the company's property and assets," is "not the law of Maryland."

It is difficult to see, therefore, even conceding the conclusion of the Court under the law of Maryland to be sound, (which we are by no means prepared to do), how that case can be regarded as much of an authority here, where the law of the State is very different from what the law of Maryland is declared to be.

Another difficulty is that a patent is not within the jurisdiction of any State:

The late Justice GRAY, when C. J. of Mass., said:

> A patent right is not within this Commonwealth, by reason of the owners residing and being found here, in any other sense than his interest in any debt or right of action owned by him.
>
> *Carver* v. *Peck*, 131 Mass. 291.

> These incorporeal rights [patent rights and copyrights] do not exist in any particular State or district; they are co-extensive with the United States. There is nothing in any Act of Congress, or in the nature of the rights themselves, to give them locality anywhere, so as to subject them to the process of courts having jurisdiction limited by the lines of States and districts.
>
> *Stevens* v. *Gladding*, 58 U. S. 447; 15 L. ed. 155.

NEW JERSEY FRANCHISE TAXES.

Storage Battery Co. v. *Board of Assessors*, 60 N. J. L. 66. —In this case, as in *People* v. *Campbell*, there was no such

contention made as in the case at bar. The Court, at p. 68, says:

> The contention is that the company is wholly exempt from taxation by force of the proviso in Section 4 of the Act of 1892. Gen. Stat., p. 3337, Section 260.

The statute in question provides that corporations "shall pay an annual license fee or franchise tax of one-tenth of one per centum on all amounts of capital stock issued and outstanding," etc., and the *proviso* in question reads, in part, as follows:

> *Provided*, that this act shall not apply to . . . . . manufacturing or mining corporations, at least 50 per centum of whose capital stock issued and outstanding is invested in mining or manufacturing carried on within this State.

Marsden Company v. *Assessors* and *Honduras Company* v. *Assessor* are exactly similar cases. The quotation from these cases at page 92 of appellees' brief is all that is necessary to establish our contention in respect to these cases, in which there is this very clear and very broad distinction to be drawn:

In New Jersey the tax upon the capital stock is the tax levied upon the corporation *for the privilege of* ***being*** *a corporation* under the New Jersey laws. Whether the company has any assets at all or not has nothing to do with the case. It is the same as the fee charged in many States, including the State of Indiana, for the privilege of becoming a corporation and maintaining itself as a corporation.

In the quotation given by counsel from the *Storage Battery Company* case (pp. 91–92), this clearly appears by the following language:

> Corporations of the class to which this company belongs are taxable with respect to the capital stock issued and outstanding ***as a fixed factor*** without regard to the purpose for which the capital stock was issued or whether issued for value or not.

In other words, there is no "valuation" of the capital stock involved in this taxation at all. It is in the nature of a *license* or *charter tax* or *fee* and nothing else. It would be hard to imagine conditions more different than those of this case.

In *Marsden Co.* v. *Assessors* it is said:

> The argument for exemption rests upon the false premise that the tax assessed is a property tax.

THE RULE IN PREVIOUS TAX CASES.

Appellees also much rely upon the "Bank Tax Cases" of *Van Allen* v. *Assessors*, 70 U. S. 573.

Undoubtedly these are leading cases, and the decision there reached by a majority of the Court is of great importance and settled important questions of taxation.

But these cases seem to have no application to the case at bar, as the facts are widely different and the statutes involved still more widely different.

The Court in that case, after enumerating the provisions of the Act of Congress under which national banks are established, said:

> Now, these are *very great powers and privileges* conferred by the Act upon these associations, and which are founded upon a **new use** and application of these government bonds, especially the privilege of issuing notes to circulate in the community as money.
>
> . . . . . .
>
> In the granting of chartered rights and privileges by government, especially if of great value to the corporators, certain burdens are usually, if not generally, imposed as conditions of the grant. Accordingly, we find them in this charter. They are very few, but distinctly stated.
>
> They are, *first*, ... and *fourth*, ***a State tax*** upon the shares of the association held by the stockholders, not greater than assessed on other moneyed capital in the State, nor to exceed the rate on shares of stock of State banks.
>
> . . . . . .
>
> The question involved is altogether a different one from that decided in the previous bank cases and stands upon different considerations. The State tax, under this Act of Congress, involves no question as to the pledged faith of the government. **The tax is the condition for the new rights and privileges conferred upon these associations.**

The Court proceeds to point out a distinction between **shares** held by individuals and the **capital stock** of the

corporation, and shows how Congress had provided that the president and cashier of such banks shall cause to be kept at all times a full and correct list of the names and residences of all the shareholders and the number of shares held by each, which list shall be subject to the inspection of shareholders and creditors "and the officers authorized to assess taxes under State authority," etc.

In the present case we find no such conditions. There is no **new use** of Letters Patent specially conferred by Act of Congress upon this corporation. There are no great and extraordinary "powers and privileges" here to be considered. The patents in question are ordinary patents, issued in the ordinary way, with the usual rights and privileges which are granted when patents are issued, and no others. The corporation can make no other or different use of its patents than an individual could. The corporation is organized under the general Indiana law governing the organization of ordinary corporations. There is nothing whatever in that law which prevents it from owning and using patents. There is no reason, in fact, or assigned, why it should not make this ordinary and regular use of its patent privileges. There is no suggestion here that the State of Indiana has ever attempted to restrict its corporations in the matter of ownership or use of patents. In short, the corporation stands before us, in respect to its ownership of patents, precisely as an individual patentee or owner of patents might do. There is no legerdemain involved in the matter. There is no mystery to be solved. Appellant is under no legal disabilities in respect to any question here presented. It has the same rights, as a suitor, that any other person, natural or artificial, might have. And the questions to be decided are not to be decided in view of *special* legislation granting "very great rights and privileges" (such as the privilege of issuing its notes for money), but are to be decided wholly under the *general* legislation governing patent property, under which it stands, and must stand, in the same position as any other owner of patent property.

And the tax here attempted to be assessed is not upon the "*shares*," but upon the "*capital stock*."

In the case of *Owensboro National Bank* v. *City of Owensboro*, *supra*, after citing *McCulloch* v. *Maryland*, 4 Wheat. 316; *Osborn* v. *Bank*, 9 Wheat. 738, and *Davis* v. *Elmira Savings Bank*, 161 U. S. 283 (from the latter of which a quotation is taken), the Court says:

> It follows then necessarily from these conclusions that the respective states would be wholly without power to levy any tax, either direct or indirect, upon the national banks, their property, assets, or franchises, were it not for the permissive legislation of Congress.

These bank cases, therefore, are not authority for the contentions of appellants in this case. Congress has not passed any act permitting the taxation of patents, or "patent rights," and it may further be said that obviously these cases constitute no exception to the rule that that which can not be done directly can not be done indirectly, because United States bonds are *always* included in the capital of national banks. The authorization of the act of Congress was complete, and Congress knew when it passed the act that a part of the stock of a national bank *must* (sec. 5159 R. S.) be invested in Government bonds, because a bank can not be a national bank without owning Government bonds—and, therefore, Congress here has directly—as directly as if it in terms had said so—authorized the taxation of bonds so held. There is nothing indirect about it. To authorize a thing to be done which necessarily and inevitably causes another thing to be done, is the same thing as authorizing that other thing to be done,—under all the rules of logic, reason and common sense.

A pertinent authority against the course of suits and appeals which appellees have suggested, is found in the decision of this Court in *Morgan* v. *Beloit*, 7 Wall. 613 (19 L. ed. 203), where the Court said:

> If the Town should be compelled to pay the entire amount, the right is given by the statute to recover back the proportion for which the City is liable. ***This would involve circuity of litigation.*** The remedy at law is, therefore, neither plain nor adequate.

There is another reason why appellant should not pay, and then sue to recover back, which is clearly shown by the following authority:

It is next suggested that since there is a plain, adequate and complete remedy by paying the money under protest and suing at law to recover it back, there can be no equitable jurisdiction of the case.

The reply to that is, that the bank is not in a condition where the remedy is adequate. In paying the money it is acting in a fiduciary capacity as the agent of the stockholders; an agency created by the statute of the State. If it pays an unlawful tax assessed against its stockholders, they may resist the right of the bank to collect it from them. The bank, as a corporation, is not liable for the tax, and occupies the position of stakeholder, on whom the cost and trouble of the litigation should not fall. If it pays, it may be subjected to a separate suit by each shareholder. If it refuses, it must either withhold dividends and subject itself to litigation by doing so, or refuse to obey the laws, and subject itself to suit by the State. It holds a trust relation which authorizes a court of equity to see that it is protected in the exercise of the duties appertaining to it. To prevent multiplicity of suits, equity may interfere.

Cummings v. *National Bank of Toledo*, 101 U. S. 153 (25 L. ed. 903.)

In the *State Railroad Tax Cases*, 92 U. S. 575 (23 L. ed. 663), which has been cited by the appellants, we find much which is instructive.

In that case, among other things, the Court says:

> One of the reasons why a Court should not thus interfere, as it would in any transaction between individuals, is, that it has no power to apportion the tax or to make a new assessment, or to direct another to be made by the proper officers of the State.

This objection does not obtain in the present case, as, whatever the event, no new assessment is to be made. The assessment complained of will stand, or it will be wholly wiped out.

The Court also, in giving reasons why the decrees should be reversed and remanded with directions to dissolve the injunctions, stated:

> There is no violation of the Constitution, either in the statute or in its administration, by the board of equalization. No property is taxed that is not legally

liable to taxation; nor is the rule of uniformity prescribed by the Constitution, violated.

In the present case appellant contends that there has been a violation of the constitution, and that property *has* been taxed that is "not legally liable" to taxation.

Further along the Court observes that it is a profitable thing for corporations to obtain a preliminary injunction as to all their taxes and contest the case for several years, and at the end submit to pay what is found to be due, and states that before a bill can be maintained, what is conceded or appears to be due must be paid. In this case appellee did pay all and more than seems to be due.

It will thus be seen that appellant has scrupulously kept itself within the law as laid down in this case. It seems, therefore, that it is an authority rather in its favor than against it.

In *P., C. C. & St. L. Ry. Co.* v. *Board of Public Works of the State of West Virginia*, 172 U. S. 32, this Court quotes approvingly from the "State Railroad Tax Cases," and thus it may be considered that the decision in the last named case was reached subject to the rule laid down in the former case. It does not appear, at all events, that any Federal questions were presented, such as are inseparably involved in the determination of the case at bar.

In the *State Railroad Tax Cases, supra*, this Court said:

> We do not propose to lay down in these cases any absolute limitation of the powers of a court of equity in restraining the collection of illegal taxes; but we may say that, in addition to illegality, hardship or irregularity, the case must be brought within some of the recognized foundations of equitable jurisdiction.

It would seem to us that for numerous reasons given in this brief we have brought this case "within some of the recognized foundations of equitable jurisdiction."

If upon the authority of the *State Railroad Tax Cases* it is urged that we should have paid the State taxes, and confined our suit to the county, city and township taxes, we reply: If we had paid the State taxes, we had no remedy at law for their recovery, because suit in the Superior Court of

Marion County would not have resulted in a judgment which could have been enforced by execution, and until an appropriation was made by the legislature such judgment would be of no avail. This remedy, therefore, is entirely inadequate. Moreover, it was a remedy which could not be resorted to in the Federal courts, to which complainant (by reason of this case presenting a Federal question) had the right to resort to recover money for taxes illegally exacted from it, or, in a proper case, to enjoin their collection. Certainly, we can not be compelled, in the first instance,—where we have a cause of action arising under the Constitution and laws of the United States, and a right to resort for an enforcement of our remedy, whatever it is, to the Federal court,—to resort to any remedy provided by the State statutes which can not be administered in Federal courts, or which would not result in a judgment which would be directly enforced by the Court. If it were otherwise, our right to resort to Federal courts would be taken away by State legislation, and, clearly, no suit at law can be maintained in a Federal court to recover State taxes, because the suit must either be directly against the State, or a State officer representing the State. Prohibition to sue a State equally applies against a State officer, acting for and representing the State.

Therefore (if the statutes are still in force) the statutory remedies suggested,—appealing to the State Board of Tax Commissioners of the State of Indiana, and application to the Board of County Commissioners of Marion County, and application to the Common Council of the City of Indianapolis, for the refunding of taxes illegally collected—do not apply:

1. Because they can not be administered in the Federal court; and if appellant was required to resort to them, it would be deprived of its right to resort to the Federal court.

2. Because they do not result in a judgment which can be enforced by the Court by ordinary processes. They are, therefore, not an adequate legal remedy, such as would prevent equitable relief by injunction in the Federal courts.

3. It is also the established law in the State of Indiana that the collection of an illegal tax can be enjoined notwith-

standing the statutory remedies for the refunding of such taxes when paid.

Hyland, Auditor, et. al. v. *The Brazil Block Coal Company*, 128 Ind., 355, is an authority in point. There the company had made a full return of its taxable property, and the proceeding was to enjoin the collection of a tax levied on its capital stock, which was assessed additionally to the tax on the property. In the course of its opinion the Court, at p. 342, said:

> The plaintiff does not seek to defeat a part of an assessment, but it seeks to prevent the levy of an assessment upon property not subject to taxation. The statute does not, as we have seen, authorize the assessment of the capital stock, and as there is no property subject to taxation, there can be no part of an assessment which the appellee is bound to pay.
>
> As it is made to appear by the complaint that the capital stock did not exceed in value the tangible property returned for taxation, there is no question as to the effect of the finding of the Board of Equalization; for the question is whether the Board can assess property which, by law, is not subject to taxation. If the property—that is, the capital stock—had been subject to taxation, then the question as to whether the value placed upon it by the Board is final and conclusive would be presented, but as the confessed allegations show that the capital stock was not subject to taxation, the Board had no authority over it, since it is clear that the Board cannot make property of any kind subject to assessment when there is no statute conferring that authority upon it.

The foregoing case is closely analogous to that at bar. Here we show, as there, that "there is no property subject to taxation," and the property is, as there, the "capital stock." We say that over this property, under the evidence made as to its character, that "the Board had no authority."

It may be said that there is an Indiana statute authorizing such assessment, but as this Court said in *Allen* v. *B. & O. R. R. Co.*, *ante* (pp. 7–8), "an unconstitutional law will be treated by courts as null and void."

It would seem that a plaintiff who has a right to go into the Federal courts because of diversity of citizenship or of a

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Federal question being involved, should be allowed the remedy of injunction whenever, under the facts stated in his bill, it would be sustained in the State courts, as would seem to be the case in Indiana, under the authority last quoted from.

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proceeding like this, it was necessary to go farther and show that *some fact existed which rendered the action of the board of equalization void.*

standing the statutory remedies for the refunding of such taxes when paid.

Hyland, Auditor, et. al. v. *The Brazil Block Coal Company,*

Injunction is a proper remedy in the courts of Indiana against a **void** tax:

Stockman, Treas., v. *Robbins*, 80 Ind., 195.
Board v. *Murphy*, 100 Ind., 573.
Jones, Treas., v. *Gas Co.*, 135 Ind., 595.
Senour v. *Ruth*, 140 Ind., 318 (see *ante*, p. 34).
Senour v. *Matchett*, 140 Ind., 636.
Hart v. *Smith*, 64 N. E. Rep., 661.

Stockman, Treas., v. *Robbins* was a case where suit was brought to *enjoin* an unlawful assessment. The Indiana Supreme Court, in affirming the decision of the lower court overruling demurrers to the complaint, sustained this as a proper procedure in Indiana. This was in 1881, nearly 30 years after the enactment of the statute of 1853. This case was approved in *Board* v. *Murphy*, 100 Ind., 573, in 1885.

In *Senour* v. *Ruth* it was said:

> "When we have found that the property was not within the jurisdiction of the State, we have found the absence of an element *necessary* to the validity of the board's action, and in such case the action is *void*, and may be attacked collaterally."

This was approvingly quoted in *Hart* v. *Smith*, the latest case in that Court on the subject, and is certainly the established law in Indiana.

See quotation from *Adams Express Co.* v. *Ohio*, p. 33 of appellant's reply brief, and quotations from *Hart* v. *Smith*, pp. 33, 34.

treated by courts as null and void.

It would seem that a plaintiff who has a right to go into the Federal courts because of diversity of citizenship or of a

Federal question being involved, should be allowed the remedy of injunction whenever, under the facts stated in his bill, it would be sustained in the State courts, as would seem to be the case in Indiana, under the authority last quoted from.

The case of *Shelton* v. *Platt*, 139 U. S. 591 (35 L. ed. 273), is to be clearly distinguished from the case at bar in many particulars, which are easily apparent upon an examination of the opinion.

The notable and conspicuous matter, however, to which we desire to especially direct the attention of the Court, is the broadly different statutory condition existing in Tennessee from that which exists in Indiana. The Tennessee Statute, Sections 1 and 2 of the Act of 1873, set out in the statement of the case in *Shelton* v. *Platt*, shows a plain, direct, unitary and simple statutory remedy in *all* cases of unlawful taxation, and which covers *all* such taxes and enables *all* such questions to be determined in a single proceeding.

The statutes of the State of Indiana, quoted in appellees' brief, do not, as those of Tennessee do, afford the single, simple, plain and adequate remedy which is necessary to oust equity of its jurisdiction.

This point will not be argued further, as a mere comparison of the statutes in question, which can conveniently be had from appellees' brief, and the report of *Shelton* v. *Platt* will make it plain. This, independent of our contention that we had in this case the clear right to go to the Federal Court.

In *Jones, Treas.* v. *Gas Co.*, 135 Ind. 595, cited by appellees at p. 28 of their brief, the Indiana Supreme Court, on p. 599, say:

> This case was tried upon the theory that the appellee was entitled to relief if it succeeded in showing that its whole capital was invested in tangible property returned for taxation, and that its capital stock did not, in fact, exceed in value such property. The theory is erroneous. Had this been a trial, on appeal, to a tribunal authorized to correct the assessment, the theory would have been correct, but, in a collateral proceeding like this, it was necessary to go farther and show that *some fact existed which rendered the action of the board of equalization void.*

> *Unless* its action was void, the collection of the tax levied upon its assessment can not be enjoined.

This shows clearly that in Indiana if any fact can be shown on the trial of a suit in equity which renders the taxation *void* the collection of the tax may be enjoined.

The quotation in appellees' brief (p. 24) from *Senour* v. *Matchett* also clearly shows that the Supreme Court of Indiana does not consider that the course of appeals prescribed by the Indiana taxation act must be followed in cases where the taxation is void. Note the language:

> A person aggrieved by reason of the errors or irregularities that may enter into the decisions or orders of the Board of Review, *and which may render the same* ***voidable*** *but not* ***void,*** must invoke the remedy provided by appeal, and will not be permitted to assail the same in a court of equity.

If the law in Indiana, as declared by its Supreme Court, has any bearing upon this case, it establishes (the tax being shown to be void because levied upon "patent rights") that the taxation might properly be enjoined.

The "*Dows Case*," 11 Wall. 108, is cited (appellees' brief, p. 38) upon the point that a bill to restrain the collection of a tax will not lie unless the case is brought within some acknowledged head of equity jurisdiction. Appellant sees no occasion to controvert the legal proposition thus laid down, and calls attention to the fact that this Court cited approvingly in that case *Heywood* v. *Buffalo*, 14 N. Y. 534, to the effect that the rule that a court of equity will not entertain an action by the party aggrieved, for relief against erroneous or illegal assessment, is subject to *three exceptions*, which this Court stated as follows:

> Where the enforcement of the assessment would lead to a *multiplicity of suits*, or where it would produce *irreparable injury*, or **where the assessment on the face of the proceedings was valid, and extrinsic evidence would be required to show its invalidity.** Whenever a case was made by the pleadings falling within *either* of these exceptions, the court said that equity would interfere to arrest the excessive litigation, or prevent the irreparable injury, or remove the cloud upon the title, but would not interfere where none of these circumstances existed.

In this view of the case (which, however, we do not desire to be understood as accepting) the assessment "on the face of the proceedings" seemed to be entirely valid and regular because it was authorized and required by the statutes of the State of Indiana, and by the forms printed in pursuance and in accordance with said statutes. It required "extrinsic evidence to show its invalidity." Until the fact that patents issued under the Constitution and laws of the United States were the sole basis for the stock was made evident, there was nothing, if appellees' contention is correct, to show that the assessment was not a proper one.

Under the authority above cited, therefore, this equitable proceeding is clearly authorized.

In nearly all of the cases cited by appellees' counsel the question of *value* seems to be the leading and controlling one. In this case there is no such question. The real issue is whether or not the Federal law renders the assessment under the Indiana law wholly void.

As was lately well said by the Supreme Court of Texas:

> The wrong did not consist in a failure to follow the directions of the law, but in obeying its unconstitutional requirements.
>
> *Hutcheson* v. *Storrie*, 92 Texas, 685.

INHERENT TAXABILITY AND INHERENT NON-TAXABILITY.

In the consideration of the authorities cited by appellees relating to taxation, this distinction is to be observed, rendering them inapplicable to or modifying their effect upon the present case:

These cases uniformly involve taxation of property *inherently* subject to taxation. Railroads, bridges, moneys, and such like things, obviously ought *always* to be taxed, unless there are special conditions, such as antecedent contractual rights, exempting them.

In the present case, on the contrary, the property is inherently non-taxable. To attempt to place a taxable value upon a patent right is in violation of the rules of common sense and common reason, as well as the paramount law.

We say, therefore, bearing in mind the rule that a decision is authority only in cases where the facts and circum-

stances or the principles involved are the same, that it is not necessary to distinguish these cases in detail; but that, whatever apparent bearing any language found therein may have upon the questions at issue, will be seen to have lost its pertinency, when viewed in the light of the above-stated broad differences which must be held to be present in the subjects-matter. We are dealing here with a new case, different from any which this Court has heretofore been called upon to consider; and while the general principles governing the decision in the case of *McCullough* v. *Maryland*, and similar or analogous cases, are thought to be pertinent and controlling, inasmuch as in those cases the broad right to do something which was granted by Federal law was attempted to be curtailed and hampered by State action, it is equally obvious that these other cases, relating merely to excessive or irregular taxation of property in itself taxable, can have but little or no bearing upon the question which we have endeavored to present to the Court.

WANT OF JURISDICTION OVER NON-TAXABLE PROPERTY.

All the valid statutes providing for the taxation of property must relate to property which the State is not excluded from taxing by the laws of the United States, and cannot relate to property which is not within the jurisdiction of any State Court or tribunal.

If the taxation of patent rights is within the jurisdiction of the taxing authorities of Indiana, these authorities have the right to decide that a patent right *is* taxable, as well as to decide that a patent right is *not* taxable, and (in either case) the decision is not a nullity, but at most only erroneous, and when the remedy—by appeal or other direct steps—to review such decision is exhausted, the result cannot be attacked in any other court, either State or Federal, as such attack would be a collateral one.

It follows, therefore, if appellant has any remedy at all against this illegal taxation of its patent rights, that it must be by a suit against the taxation itself, and presumably in the Federal Court.

This taxation is *in rem* and not *in personem*. The State authorities have no jurisdiction of the property in question.

Supra, p. 48. It is entirely beyond their power. That its owner is a corporation of the State can make no difference. The State has not forbidden its corporations to invest its stock in Letters Patent, or annexed any conditions to its so doing, except that providing for the taxation of patents, to attack the validity of which is the sole purpose of this suit. The corporation has fully complied with all legal requirements of the State.

Again we say, therefore, that the proceeding in the Federal Court was the proper one, and the only proper one; and that any attempt to subject this property to taxation is entirely void, because State tribunals have *no jurisdiction* for taxing such property, or any legal authority in that behalf whatever. If we go into State tribunals, we recognize the authority of such tribunals, which is the very thing we are denying.

> It is the right and duty of the National Government to have its Constitution and laws interpreted and applied by its own judicial tribunals.
>
> *Mayor, etc. of Nashville* v. *Cooper*, 73 U. S. 247; 18 L. ed. 851.

This Court has never in any of the cases which have been before it decided that non-taxable property should be taxed. Indeed, it has taken pains to expressly hold the contrary. In *Adams Express Co.* v. *Ohio* (166 U. S.), cited by appellees in their brief, on the final consideration, on rehearing, this Court, at pp. 222–223, expressly held (citing authorities) that if the company had United States bonds or other property exempt from taxation, and should show the facts, those facts *must be taken into consideration*, saying:

> That if such facts exist they must be taken into consideration by a State in its proceedings under such tax laws as are here presented has been heretofore recognized and distinctly affirmed by this Court.

and if a company having such property omitted to show the facts it could not complain at the result. It is sufficient to say that this appellant has always, everywhere, and on all occasions, shown the facts in respect to its property. It has taken pains to make these facts clear and conspicuous. The whole contention is based upon the persistent, repeated and elaborate showing of these particular facts—viz., that its

stock consists of Letters Patent of the United States, and of nothing but Letters Patent of the United States. These facts, therefore, make all such decisions cited by appellees inapplicable as authorities. If applicable at all they sustain appellant's contention, rather than that of appellees.

FEDERAL COURT HAD EQUITABLE COGNIZANCE.

In this case the questions of want of jurisdiction and want of equity are closely related. In other words, if the Federal court had jurisdiction, then it had jurisdiction in equity, because, as has heretofore been shown in the original brief, no remedy at law was possible in that court.

The right of a party to have a Federal question determined in a Federal Court is a right that excludes the jurisdiction (unless the party voluntarily resorts to it) of any State court or tribunal to determine the question, and when he resorts to the Federal Court the question of whether he shall sue on the law or equity side of the court is to be determined solely with reference to the fact as to whether he has an adequate remedy at law in the Federal Court, and excludes consideration of legal remedies which are only available to him in State Courts or tribunals.

Whether appellant had any legal remedy or not in a State Court is therefore immaterial in the present case.

We say the State tribunals had *no jurisdiction* of the subject-matter.

No State authority has, or can have, authority to tax Letters Patent of the United States.

The only effective remedy in the Federal Court was the equitable one sought.

Therefore the Federal Court clearly had equitable cognizance of the case as brought, and should have decided it on its merits.

> The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a Federal Court is not to be conclusively determined by the statutes of the particular State in which suit may be brought. One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a

suit in that court; and he **cannot be deprived of that right** by reason of his being allowed to sue at law in a State court on the same cause of action. It is true that an enlargement of equitable rights arising from the statutes of a State may be administered by the Circuit Courts of the United States. [Citations.] But if the case in its essence be one cognizable in

vidual shareholders are two distinct pieces of property.

. . . . . .

This statement has been reiterated many times in various decisions by this Court, and is not now disputed by anyone.

Owensboro National Bank v. *Owensboro*, 173 U. S. 664; 43 L. ed. 850.

This case, it may be said, involved taxation which was "imposed upon the bank and its property or franchise, and not upon the *shares* of stock in the name of the stockholders," and such taxation was by this Court declared to be void and

stock consists of Letters Patent of the United States, and of nothing but Letters Patent of the United States. These facts, therefore, make all such decisions cited by appellees inapplicable as authorities. If applicable at all they sustain appellant's contention, rather than that of appellees.

FEDERAL COURT HAD EQUITABLE COGNIZANCE.

This Court, as lately as 1899, has had two cases before it involving the right to maintain a suit in a United States Circuit Court to enjoin a tax imposed upon property and franchises in violation of Federal law.

In *Third National Bank* v. *Stone, Auditor*, 174 U. S., 432, 434, where the Circuit Court had sustained a demurrer to the bill and dismissed the suit, this Court *reversed* the judgment.

In *Louisville* v. *Third National Bank*, 174 U. S., 435, where the Circuit Court awarded a decree restraining the collection of such taxes, this Court *affirmed* the judgment.

These decisions were both upon the express ground that the taxes sought to be enjoined were imposed by the Kentucky taxing officers upon the franchises and property of the bank in violation of the Act of Congress.

The judgments in these cases seem to be a conclusive answer to appellees' contention that no such suit in equity as this can be maintained.

equitable one sought.

Therefore the Federal Court clearly had equitable cognizance of the case as brought, and should have decided it on its merits.

> The adequacy or inadequacy of a remedy at law for the protection of the rights of one entitled upon any ground to invoke the powers of a Federal Court is not to be conclusively determined by the statutes of the particular State in which suit may be brought. One who is entitled to sue in the Federal Circuit Court may invoke its jurisdiction in equity whenever the established principles and rules of equity permit such a

suit in that court; and he **cannot be deprived of that right** by reason of his being allowed to sue at law in a State court on the same cause of action. It is true that an enlargement of equitable rights arising from the statutes of a State may be administered by the Circuit Courts of the United States. [Citations.] But if the case in its essence be one cognizable in equity, the plaintiff—the required value being in dispute—may invoke the equity powers of the proper Circuit Court of the United States whenever jurisdiction attaches by reason of diverse citizenship or upon any other ground of Federal jurisdiction. [Citations.] A party by going into a national court does not, this Court has said, lose any right or appropriate remedy of which he might have availed himself in the State courts of the same locality; that the wise policy of the Constitution gives him a *choice* of tribunals. [Citations.]

Smith v. *Ames*, 169 U. S. 466; 42 L. ed. 819.

CAPITAL STOCK—NOT SHARES—WAS ASSESSED.

The taxation here complained of is upon *the capital stock of the corporation*, as distinguished from the *shares of stock* into which it is divided.

The quotations from the Indiana tax act of 1891, found in appellees' brief, all show that this is the method of taxation of corporate capital in Indiana. The capital stock is shown to consist of patent rights. The distinction between capital stock and shares of stock has been clearly defined by this Court.

> The capital stock of a corporation and the shares into which such stock may be divided and held by individual shareholders are two distinct pieces of property.
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> . . . . . .
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> This statement has been reiterated many times in various decisions by this Court, and is not now disputed by anyone.
>
> *Owensboro National Bank* v. *Owensboro*, 173 U. S. 664; 43 L. ed. 850.

This case, it may be said, involved taxation which was "imposed upon the bank and its property or franchise, and not upon the *shares* of stock in the name of the stockholders," and such taxation was by this Court declared to be void and

the decree of the court below sustaining such taxation was therefore reversed.

USELESSNESS OF APPEAL TO STATE BOARD.

Appellees also call attention to the fact that appeals were not taken from the Marion County Board of Review to the State Board of Tax Commissioners; and it is insisted that this is a fatal omission. It is sufficient, we think, in reply to say that by far the greater portion of the taxes complained of were fixed by this same State Board of Tax Commissioners on appeals taken (and procured to be taken) by counsel for appellees, as fully appears in the record. We, therefore, have before the Court not only the presumption that the State Board of Tax Commissioners would have followed the Indiana statute and, like the Marion County Board of Review, taxed appellant's patents, but it also appears that this identical Board of Tax Commissioners actually did this very thing.

We may also say that in our view these taxing officers *must*, under the Indiana statutes, have taken the "patent rights" directly into consideration in performing their duties. The statutes governing them have already been referred to and quoted from, both in the bill (p. 3) and in our brief (p. 8). When it is alleged that these taxing officers did *not* take the patents into consideration, the Court is asked to believe that they *disobeyed* the law which created them and *refused to perform duties clearly laid down in the statutes of the State of Indiana which govern them*. They would have us believe that they are a tribunal to which constitutional questions are delegated for decision, and that they had declared the statutes of the State of Indiana in this particular unconstitutional and had proceeded to assess the property which they had decided to be constitutionally and lawfully assessable, and had omitted to assess certain other property which the statute and statutory form require them to assess.

Such an assumption needs only to be stated to show its untenability. Taxing officers must necessarily follow the statutes under which they act until such statutes are declared invalid or inoperative by competent authority. If they say they have not, that is tantamount to saying that all their acts are absolutely void, as being without authority of any kind.

If they acted lawfully as taxing officers, then they acted *under* the statutes enacted for their guidance—not in *defiance* of them. If they did not act under the statutes of the State of Indiana by which these boards were established and by which they must be governed, they were mere assemblages of private citizens, without any authority whatever in the premises. That some or all of the provisions of these statutes may in proper proceeding be found to be unconstitutional and void, in no way avoids the duty of such officers as these to obey and act under them while they appear to be in force. The record shows that this Board did actually obey the unconstitutional act complained of.

WHAT "FRANCHISES" ARE TAXABLE.

We are shown by appellees in their brief (pp. 13–21), by means of quotations from the statutes of the State of Indiana, that all property and franchises "owned" by corporations or by individuals should be taxed. This must necessarily mean that all property and franchises "owned" by corporations or individuals which are *lawfully taxable* should be taxed. It cannot mean that property or franchises owned by either corporations or individuals which are not lawfully taxable should be taxed.

Neither can it mean to include in the term "franchises . . . owned" the charter of the corporation itself. These charters are for sale, by the State of Indiana, for a fixed and definite sum, and can be secured, any day, by any three or more persons, for the price prescribed, and in the manner provided, in the following sections of the statute:

> *Act in force August 24, 1875.* **How incorporated.** 1. Whenever three or more persons may desire to form a company to carry on any kind of manufacturing, mining, mechanical, or chemical business, or to furnish motive power to carry on such business; or to supply any city or village with water; or to form union stock yards and transit companies, and operating, maintaining, and transacting the business incident to such companies; or to form grain elevator companies, and constructing, maintaining, and operating elevators, and transacting the business incident thereto; or to form companies for the purpose of buying and selling dry goods, carpets, boots and shoes,

millinery goods, fancy goods, or jewelry, in connection with the manufacture of such goods, and articles, into any articles for which they are suitable, and for the sale of such articles, when they are so manufactured—they shall make, sign and acknowledge, before some officer capable to take acknowledgment of deeds, a certificate, in writing, which shall state the corporate name adopted by the company, the object of its formation, the amount of capital stock, the term of its existence (not, however, to exceed fifty years), the number of directors and their names who shall manage the affairs of such company for the first year, and the name of the town and county in which its operations are to be carried on, and file the same in the office of the Recorder of such county, which shall be placed upon the record, and a duplicate thereof in the office of the Secretary of State.

Act in force May 6, 1853. **When incorporated.** 2. When the certificate shall have been filed as aforesaid, the persons who shall have signed and acknowled the same, and their successors, shall be a body politic and corporate, and, by their corporate name, may take, hold, and convey real estate necessary to carry on the operations named in such certificates.

Act in force March 4, 1891. **Fees-Corporations.** SECTION 1. *Be it enacted by the General Assembly of the State of Indiana*, That the Secretary of State shall hereafter charge and collect, for the benefit of the State, the following fees, viz:

First. For filing with such Secretary of State the articles of incorporation, or a certified copy or duplicate thereof, of any corporation whose capital stock is ten thousand dollars or under, ten dollars. Of a corporation whose capital stock is over ten thousand dollars, one-tenth of one per cent. upon the authorized capital stock of such association.

. . . . . .

SEC. 2. All the fees in this act provided for shall be paid into the State Treasury, and shall be in addition to any fees that are now allowed by law to the Secretary of State for personal services for filing any of the papers herein mentioned. And such Secretary of State shall neither file nor record any of the articles of incorporation, certificates, duplicates or other papers hereinbefore mentioned, unless all the fees for filing the same are first duly paid.

The act of July 1, 1895, by section 3, provides for the above mentioned personal fees to the Secretary of State, and so much thereof as relates to the present matter reads:

> For each attestation and seal other than herein exempted, fifty cents; for filing and recording each article, charter, certificate of incorporation, not exceeding two hundred words, one dollar; for all recording and copying of records, papers and documents not otherwise provided for, per hundred words (four figures counting as one word), ten cents.

The County Recorder is entitled under Sec. 117 of the "fee and salary act" in force July 1, 1895, to charge for making the record provided for in the incorporation act, ten cents per hundred words, but not less than fifty cents in any one case.

These are all the fees, and include all the price, for which the State of Indiana sells corporation charters. No more is demanded, no more is required. A set price having been fixed by statute, it can not be held, by implication, that a further price is to be required. A charter can not have a *taxable* value because, *first*, it is a mere matter of expense; and, *second*, a new one can be had any day for the same price, and its total value can not therefore be greater than its cost. Besides, a charter of a corporation is owned by the stockholders, and not by the corporation as such.

Therefore, the franchises or privileges which are to be taxed, are such franchises and privileges as are enjoyed (for example) by transportation companies, and which are frequently of great value, and are marketable for large sums, as is a matter of common knowledge.

The laws of Indiana require taxation to be *uniform*, on corporations and individuals alike; and when these laws require the taxation of capital stock and franchises in the case of one, it means precisely the same thing as when they require the taxation of corresponding property in the case of the other. A corporation owning ten thousand dollars of capital stock and a street railway franchise, is to be taxed to the same extent and upon the same amount, as an individual having ten thousand dollars in money and a street railway franchise.

As elsewhere pointed out, the New Jersey cases are not applicable, because the statutes of Indiana do not require any annual payment for corporate charters, or any payment whatever except that required at the time the charters are granted as shown in above-quoted statutes. There is nothing whatever in the laws of Indiana requiring or providing for the payment of anything in the nature of an annual charter tax. And if, as in the case of some other States, an annual charter tax *was* required, it would be a distinct and separate thing, and would not be involved in the present case, or be affected by any of the taxation laws which appellees have called to our attention, and which relate to the taxation of *property* only.

STATE POWERS OVER DOMESTIC CORPORATIONS.

It may be conceded that the State of Indiana might, as a prerequisite for the granting of charters for corporations, have required almost any conditions that it might have seen fit. It might certainly have provided for an annual charter tax. *It has not.* It might perhaps have provided that no corporation organized under its laws should own United States Letters Patent. *It has not.* It may even be conceded for the sake of this argument that it might have provided that if any of its corporations should acquire Letters Patent of the United States, they should return them for taxation, and that they should be taxed, although this is going far beyond what we believe to be a legitimate exercise of the State authority; but the all-sufficient answer to such a proposition, is: *It has not.*

Taxation is a burden, although necessary, even when conducted with the utmost justness and fairness. Such burdens are not to be extended or enlarged by implication. However just and necessary taxes are, their limits are to be defined by the statute law. And acts of taxation officers beyond or outside the statutes are unlawful, invalid, and void. All persons, natural and artificial, are to have the equal protection of the laws, and when they have paid the taxes *lawfully* imposed, their debt, in that respect, to the public, must be considered discharged.

A void law is no law. An unconstitutional law will be treated by the courts as null and void. Each act here complained of was, therefore, a nullity, a mere *brutum fulmen*, and is to be so treated by all persons and under all circumstances, in collateral as well as in direct attack.

This is not modified to any extent nor in any degree by the fact that the appellees were holders of official position and might pose as public officers in their pretended acts of levying these taxes and enforcing their collection. These taxes were not lawful taxes. That is, they were not taxes at all.

The contention that the State has a right to tax its own corporations as it pleases and thus that a different rule may be applied to corporations, in cases like that at bar, from the rule which would govern such cases where individuals are concerned, embodies a fallacy. It is readily conceded that corporations are in some respects different from individuals; and it is equally true, perhaps, that the legislature might enact measures under which the distinction should be still more marked. But no statute has been called to our attention limiting the rights of corporations in respect to the ownership of this class of property. Under what authority, therefore, or for what legal reason, are we to distinguish between the right of ownership in a natural person and the same right in a legal person when and in cases where no law exists for the distinction? Particularly so in cases of taxation, which the Indiana law expressly declares shall be "uniform."

It is not contended that there is any statutory distinction applicable to this case. Indiana has imposed no such distinctions or restrictions upon its corporations. This corporation must, therefore, be held to have the unrestricted right to purchase and own Letters Patent, the same as an individual would have—and to have the same rights under the patents which it may own as an individual would have—and to have no burdens because of such ownership that an individual would not have.

It may, perhaps, be said that a State has plenary power over its domestic corporations; that a State may refuse to create any corporations; or may refuse to create them except for certain purposes; or may refuse them the power to own certain kinds of property. But a State has not the power to

make patents taxable, either directly or indirectly; nor can it, as a matter of law, make that lawful when attempted by indirect methods which is unlawful when attempted by direct methods.

The State of Indiana has *not* passed a law that a manufacturing corporation shall not own patent rights, nor can it, indirectly, under the guise of taxing capital stock, tax those patent rights. If the State of Indiana shall hereafter provide that none of its corporations shall own patents, a different question may be presented, but "sufficient unto the day is the evil thereof." That question is not now before us.

An individual owner of a patent has never been taxed, so far as council for appellant is aware, upon the patent which he owned. Joint owners or co-partners may own a patent; and they are no more to be taxed on their individual interests than a single owner. If the owners of a patent are numerous it is nothing strange that they should organize into a corporation, assign their patents to the corporation, and receive certificates of *stock* of the corporation, in proportion to their interests in such patents, in exchange therefor. Such an organization, as is well known, is considered more convenient than a numerous partnership. But it does not change the character, value, or taxability of the patents, or multiply taxable property.

APPELLANT'S POSITION DISTINGUISHED.

I wish to distinguish clearly and emphatically between appellants' contention in this case—that the State has no power by taxation or otherwise to interfere with the enjoyment—the free, unrestricted enjoyment—of the incorporeal right secured to it by its Letters Patent,—and that other but wholly erroneous position, with which it has sometimes been confounded, which would deprive the State of control of tangible property within its borders simply because it might happen to be the subject of a patent, or the power of police regulation. On the contrary, I desire to say that in my opinion the State has precisely the same right to tax a patented *machine* that it has to tax an unpatented machine. That it has the same right to establish police regulations regarding the use of a patented invention, that it has to

establish police regulations regarding the use of a similar or corresponding unpatented invention. This is a wholly different thing from interfering with, or laying burdens upon, the patent itself—the incorporeal right—which has been granted under the Constitution and laws of the United States; and which—by the very phraseology of the Constitution itself, and of the law itself, and of the patent itself,—is made an *exclusive* right; no more to be invaded or interfered with by a State than by an individual.

The real rights of States in the matter have been defined by the Supreme Court in the cases of *Patterson* v. *Kentucky*, and *Webber* v. *Virginia*, to which attention has already been called in appellant's original brief.

Various courts at various times have declared with more or less emphasis against interference under color of authority of State laws with rights secured by Letters Patent of the United States. These questions have arisen in different ways, but the spirit of the great bulk of decisions bearing in any way upon the question is the same. Among the cases in which questions of this character have been considered are the following:

Read et al. v. *Miller et al.*, 2 Biss. 12; Fed. C. 11,610;
Robinson ex parte, 2 Biss. 309; Fed. Cas. 11,932;
Holliday et al. v. *Hunt*, 70 Ill. 109;
Crittenden v. *White*, 23 Minn. 24;
Helm v. *First Nat. Bk.*, 43 Ind. 167;
Woollen v. *Banker*, 2 Flip. 33; 17 Alb. L. J. 72; Fed. Cas. No. 18,030;
Cranson v. *Smith*, 37 Mich. 309;
May v. *Ralls County*, 31 Fed. Rep. 473;
Gamewell Fire Alarm Tel. Co. v. *New York*, 31 Fed. Rep. 312;
Castle v. *Hutchinson*, 25 Fed. Rep. 394.

Counsel is well aware that the Supreme Court of Indiana has said that decisions of this character were overruled by *Patterson* v. *Kentucky*, *supra*, but if they are carefully examined it will be seen that the questions involved in the last named case had no relation whatever to those involved in the cases above cited. *Grover & Baker S. M. Co.* v. *Butler*, 53 Ind. 454, was undoubtedly substantially overruled in the *Pat-*

terson v. *Kentucky* case; but that case differed widely from the others referred to and it is strange how the Supreme Court of Indiana could ever have fallen into the manifest and undoubted error it did in that case, ostensibly on the authority of the other cases; and it is equally strange how it could have afterwards so misinterpreted the decision in the case of *Patterson* v. *Kentucky*.

The police power of the State is unquestionable. It certainly is not questioned here any more than is the right to tax tangible property, whether the same be patented or not. Patterson had no more right to sell his dangerous illuminating oil in violation of the Kentucky law, because he had a patent on it, than my brother Taylor would have, if he had a patent on a gun, to shoot an unoffending citizen with it in violation of the Indiana law against murder. When he came to be tried for murder, the plea that he owned a patent, if made, would justly be treated as ridiculous; and if, perchance, the verdict should be that he be hanged therefor, the United States would not interfere. But he might own his patent as long as he pleased and his free use and enjoyment of it could not be interfered with—or taxed. Should he engage in the manufacture of fire arms, his manufacturing plant and the product thereof would be subject to taxation. If he engaged in the manufacture of ammunition, he must comply with local laws and regulations regarding the handling of explosive substances. But the patent or patents which he might own—the incorporeal rights—they are his. They can neither be taken away nor rendered subject to taxation or other local interference. These grants are from the sovereign power and —directly or indirectly—in and of themselves they are subject to no manner of State or local regulation. They can be acquired, transferred, used, bought, sold and enjoyed in absolute and unrestricted freedom.

THE DISTINCTION BETWEEN PATENTS AND PATENTED ARTICLES.

Certain quotations from *Patterson* v. *Kentucky*, *supra* (97 U. S. 501), will serve to bring into strong relief the distinction between the powers reserved to the States as police powers and the powers denied to the States by the Federal Constitution and laws concerning patents.

This case was heard upon writ of error to the Kentucky Court of Appeals, which had affirmed the judgment of an inferior State Court, in which upon indictment and trial a fine of $250 was imposed upon plaintiff in error for a violation of certain provisions of a Kentucky statute regulating the inspection and gauging of oils and fluids, such as petroleum, and condemning as unsafe for illuminating purposes such as ignite or permanently burn below a temperature of 130° Fahr. The oil, which was the subject-matter of the sale complained of, was also the subject of certain Letters Patent of the United States, and the plaintiff in error claimed the right to sell it, therefore, notwithstanding the State statutory police regulation above recited.

This Court held that such a construction of the Constitution and laws of the United States was inadmissible, and said:

> By the settled doctrines of this Court, the police power extends, at least, to the protection of the lives, the health and the property of the community against the injurious exercise by any citizen of his own rights. State legislation, *strictly and legitimately for police purposes*, does not, in the sense of the Constitution, necessarily intrench upon any authority which has been confided, expressly or by necessary implication, to the National Government. The Kentucky statute under examination manifestly belongs to that class of legislation.
>
> . . . . . .
>
> It is not to be supposed that Congress intended to authorize or regulate the sale, within a State, of *tangible* personal property which the State declares to be unfit and unsafe for use, and by statute has prohibited from being sold or offered for sale within its limits.
>
> . . . . . .
>
> This Court has never hesitated, by the most rigid rules of construction, to guard the commercial power of Congress against encroachment in the form or under the guise of State regulations established for the purpose and with the effect of destroying or impairing rights secured by the Federal Constitution. It has, nevertheless, with marked distinctness and uniformity, recognized the necessity, growing out of the fundamental conditions of civil society, of upholding State police regulations enacted in good faith, and which

had appropriate and direct connection with that protection to life, health and property which each State owes to its citizens.

. . . . . .

The right which the patent primarily secures is the exclusive right in the discovery, which is an *incorporeal* right, or, in the language of Lord Mansfield, in *Miller* v. *Taylor*, 4 Burr 2303, "a property in notion," which "has no corporeal tangible substance." *The enjoyment of that incorporeal right may be secured and protected by national authority against all hostile State legislation;* but the *tangible* property which comes into existence by the application of the discovery is not beyond the control as to its use of State legislation, simply because the inventor acquires a monopoly in the discovery.

This Court long ago pointed out the distinction between the taxation of a patented article and the taxation of the patent itself, and in dealing with the question Mr. Chief Justice TANEY, speaking for the Court, said:

The distinction is a plain one. The franchise which the patent grants, consists altogether in the right to exclude everyone from making, using or vending the thing patented, without the permission of the patentee. This is all that he obtains by the patent. And when he sells the exclusive privilege of making or vending it for use in a particular place, the purchaser buys a portion of the franchise which the patent confers. He obtains a share in the monopoly, and that monopoly is derived from, and exercised under, the protection of the United States.

. . . . . .

But the purchaser of the implement or machine for the purpose of using it in the ordinary pursuits of life, stands on different ground. In using it, he exercises no rights created by the Act of Congress, nor does he derive title to it by virtue of the franchise or exclusive privilege granted to the patentee.

. . . . . .

And when the machine passes to the hands of the purchaser, it is no longer within the limits of the monopoly. It passes outside of it, and is no longer under the protection of the Act of Congress.

. . . . . .

The implement or machine becomes his private, individual property, not protected by the laws of the

United States, but by the laws of the State in which it is situated. . . . . Like other individual property, *it is* ***then*** *subject to State taxation;* and from the great number of patented articles now in use, they no doubt, in some of the States, form no inconsiderable portion of its taxable property.

Bloomer v. *McQuewan et al.*, 14 How. 539. (14 L. ed. 532).

These decisions clearly state the law, and exactly coincide with appellant's contentions.

HOW PATENTS ARE "PROTECTED."

At p. 87 of their brief appellees quote from *Crown Cork and Seal Co.* v. *Maryland* to the effect that "patent rights are personal property and entitled to the same protection as other property," citing *Cammeyer* v. *Newton*, 94 U. S. 225 (24 L. ed. 72).

In *Cammeyer* v. *Newton* this Court used the following language:

> Holders of valid letters patent enjoy, by virtue of the same, the exclusive right and liberty of making and using the invention therein secured, and of vending the same to others to be used, as provided by the act of Congress; and the rule of law is well settled that an invention so secured is property in the holder of the patent, and that as such the right of the holder is as much entitled to protection as any other property, during the term for which the franchise or the exclusive right or privilege is granted. *Seymour* v. *Osborne*, 11 Wall. 516 (20 L. ed. 33), 16 Stat. at L. 201.
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> . . . . . .
>
> Section 22 of the Patent Act provides that every patent shall "contain a grant to the patentee, his heirs and assigns, for the term of seventeen years, of the exclusive right to make, use and vend the said invention or discovery throughout the United States." 16 Stat. at L. 201.
>
> Agents of the public have no more right to take such private property than other individuals under that provision, as it contains no exception warranting any such invasion of the private rights of individuals. Conclusive support to that proposition is found in a recent decision of this Court, in which it is held that the government cannot, after the patent is issued,

> make use of the improvement, any more than a private individual, without license of the inventor or making him compensation. *U. S.* v. *Burns*, 12 Wall. 246 (20 L. ed. 338).

In *Seymour* v. *Osborne*, cited in *Cammeyer* v. *Newton*, the Court stated the matter as follows:

> Inventions secured by letters patent are property in the holder of the patent, and as such are as much entitled to protection as any other property, consisting of a franchise, during the term for which the franchise or the exclusive right is granted.
>
> Letters patent are not to be regarded as monopolies, created by the executive authority at the expense and to the prejudice of all the community except the persons therein named as patentees, but as *public franchises* granted to the inventors of new and useful improvements for the purpose of securing to them, as such inventors, for the limited term therein mentioned, the exclusive right and liberty to make and use and vend to others to be used, their own inventions, as tending to promote the progress of science and the useful arts, and as matter of compensation to the inventors for their labor, toil and expense in making the inventions and reducing the same to practice for the public benefit, as contemplated by the Constitution and sanctioned by the laws of Congress.

But how is this protection to be had? The Statutes of the United States, Sec. 629, say that the Circuit Courts of the United States shall have jurisdiction:

> *Ninth.* Of all suits at law or in equity arising under the patent or copyright laws of the United States.

And Sec. 711 says:

> SEC. 711. The jurisdiction vested in the Courts of the United States in the cases and proceedings hereinafter mentioned, shall be *exclusive* of the courts of the several States:
>
> . . . . . .
>
> *Fifth.* Of all cases arising under the patent-right or copy-right laws of the United States.

As a matter of fact, the *protection* to patent property which the owners of such property invoke is always that provided for by the patent laws of the United States. No State can, will, or even pretends to, in any manner protect patent rights.

And if a State protects patented *articles*, it protects them *as articles* merely, and also *taxes* them, as it has a right to do.

"THE RIGHT TO EXCLUDE."

Appellees, in their brief (pp. 77–80), take great pains to establish, by numerous authorities, the elementary proposition, which nobody familiar with patent law ever thought of disputing or questioning, and with which we fully agree, and which exactly accords with our contention, as stated in our principal brief, that all that a patent grant consists of is "the exclusive right in the discovery," or in other words, "in the right to exclude every one from the making, using or vending the thing patented, without permission of the patentee."

They further say—and this is equally axiomatic and undisputed—that the patentee prior to the grant of his patent had the right to manufacture, sell and use the thing in question, just the same as he had afterwards. But so had everybody else! The right, therefore, being a common right, and enjoyed by all mankind, was *valueless* from a property or taxation standpoint. It was like the right to breathe—the right to walk—the right to see—the right to "life, liberty and the pursuit of happiness." These are not *taxable* things. Every schoolboy knows that. And when this is considered, and the fact that it is the exclusive right, or the right to exclude others, only, which constitutes the whole substance and comprises the essential attributes of a patent, and when it is considered that this extends throughout "the entire United States and the Territories thereof," then it is seen how clearly and unmistakably correct must be appellant's contention that it cannot be taxed by local, municipal, or State authority.

Such property does not have its *situs* in any State. It has no local habitation. It extends over the entire country. *Carver* v. *Peck*, and *Stevens* v. *Gladding*, *supra*.

And even in the New York case of *People* v. *Campbell* the Supreme Court of New York, where no opposition was made to the taxation on the grounds here urged, the Court, as elsewhere shown, held that the capital stock invested in patents was not liable to taxation by the New York authorities "except in so far as said Letters Patent of the United States apply to the territory within the State of New York." Had

the entire unlawfulness of such taxation been urged in that case, as it afterwards was in the later case of *People ex rel. Edison Electrical Illuminating Co. of Brooklyn* v. *Board of Assessors of Brooklyn* (main brief, p. 20), it would doubtless have been decided, as it was in the Edison case, that such stock was not taxable at all.

The question again recurs. How is it possible that a patent right—a mere right to exclude others from doing something—which may or may not be exercised—which may or may not be cared for by anybody—which may be valuable to-day, and because of a later invention be valueless to-morrow—which may be valuable to-day when the patent is considered valid, and valueless to-morrow because of a court decision adjudging its invalidity—how can such a thing have a taxable value; and when this right to exclude is derived from, and is a part of, the *sovereign power* of the United States, how can it be subject to any burden whatever by a subordinate authority?

This has no relation whatever to the *police powers* of States. The police power acts upon *tangible* things, and *not* upon intangible rights. If a patented article can not be used at all because of police regulations, that is a different question. Or if it must be used in a certain manner in order to satisfy the police regulations enacted for the safety of the people, that is also a different matter. None of these questions are involved here. The question here is the right of the State to tax this mere naked, intangible, "right to exclude".

SHARES—CAPITAL STOCK.

In the latter part of their brief appellees advance the proposition:

> It may be that a tax upon stock that had been exchanged for patent rights would remotely have the value of such patent rights, but are the States to be prohibited from taxing such *shares* of stock because remotely the value of some patent right is affected?

This proposition embodies several fallacies as applied to the present case. In the first place it is not "*shares* of stock" that is attempted here to be taxed, but the *capital stock*. We have no interest, in this case, in the question of whether such

shares of stock might be exchanged for patent rights or whether such exchange would (nearly or remotely) affect the value of patents owned by the company issuing such shares. These matters have elsewhere been fully discussed, and are only adverted to here for the purpose of showing the unsoundness of the above quoted proposition.

CONTRACT RIGHTS.—GOVERNMENTAL INTEREST.

Also in the latter of appellees' brief (p. 106) we find the two propositions that "no law has been passed violating any contract rights of appellant. The laws were in force when appellant came into existence." And (p. 100) that the Government "does not have any *stock* or *interest* in The Indiana Manufacturing Company."

Now this shows an utter misapprehension, or a clear attempt at evasion, of the issues involved.

It is true that the present Indiana law requiring the taxation of patents was passed shortly before The Indiana Manufacturing Company was incorporated. But the contract (or contracts) between The Indiana Manufacturing Company and the United States, or in other words, the Letters Patent granted by the United States to The Indiana Manufacturing Company, were issued under and founded upon the Constitution of the United States; which instrument, in point of antiquity, as well as in point of dignity, is, we think, the superior of the Indiana tax law; and it was adopted before the State of Indiana came into existence—if the matter of date of existence has any bearing upon the question. And the statutes of the United States governing the granting of patents are in exact accordance with the section of the Constitution relating to the subject; and these contracts are formulated and issued in exact accordance with the Constitution and the statutes; and they relate back to, and partake of, the authority of this Constitution, and these statutes, by virtue and force of which they are issued and exist.

Dodge v. *Woolsey*, 18 How. 331 (15 L. ed. 401), is a case where this Court expressly decided that a State could not impair or violate a contract, even by the extraordinary means of enacting a new constitution.

And it is cheap argument to say that the Government has "no interest" in The Indiana Manufacturing Company, after having granted it its Letters Patent. It is tantamount to saying that the Government of the United States has no interest in protecting its Letters Patent, or in seeing that its patentees are sustained in their rights thereunder. Startling proposition! That this great Government—"of the people, by the people, for the people"—has no interest in the honest execution of its contracts, because, forsooth, its statutory fees having been paid under proceedings which resulted in the grant, there is no further direct pecuniary return to the Treasury.

As well might the gentlemen say that this great Court, organized for the purpose of seeing that justice be done, has no interest in the proper determination of such cases brought before it as do not affect your Honors' salaries or the public revenues.

To these lengths would such a theory, if pursued to its legitimate conclusion, lead us. We protest against anything tending in such a direction.

If we are to be defeated here, let it not be for any such reasons or upon any such grounds. Appellant, at least, will not seek to so demean this case. Believing itself morally, as well as legally, in the right, it comes here with every confidence that its contentions will be upheld; but should we perchance be mistaken in the law, we feel confident that an adverse decision, if one be rendered, will be because it is found to be the law, and not because this great Government has no regard for the proper execution of its contracts.

FURTHER ILLUSTRATIONS AND AUTHORITIES.

It seems almost a work of supererogation to continue this argument further. Nevertheless, a few illustrations may not be inapt:

Greenbacks—money—until the time when Congress by express legislation gave the right,—was not taxable because issued by the Government of the United States.

Bank v. *Supervisors*, 7 Wall, 26 (19 L. ed. 60);
The Banks v. *The Mayor*, 7 Wall. 16 (19 L. ed. 57);
Ogden v. *Walker*, 59 Ind. 462.

Even the salaries of officers of the Government of the United States cannot be taxed by a State.

Dobbins v. *Commissioners Erie Co.*, 16 Pet. 435 (10 L. ed. 1022.)

The general power of a State to tax does not extend to agencies of the General Government.

State v. *Garton*, 32 Ind. 1.

W. U. Tel. Co. v. *Richmond*. 26 Gratt. (Va.) 1.

When legal part of taxes has been fully paid, illegal remainder cannot be enjoined.

Tallasee Mfg Co. v. *Spigener*, 49 Ala. 262.

As to the right to maintain a suit in equity and to secure an injunction, where a part of the taxes in controversy would be paid to the State and thus become irrecoverable, if paid, see

[illegible] 616: Fed. Cas. No. 4913.

As long ago at least as *Grant* v. *Raymond* (6 Pet., 218, 241) this Court declared it to be a part of the policy or "settled purpose" of the Government to promote the progress of the useful arts by granting letters-patent giving these exclusive rights; and what was then said by Chief Justice MARSHALL has been approvingly quoted as lately as May 19th of the present year:

Bement v. *National Harrow Company*, 186 U. S., 70.
Grant v. *Raymond*, 6 Pet., 218.

personal property [illegible]
lead to a multiplicity of suits, or where the law [illegible] the tax is illegal, or where there is no means of recovering back from the State taxes illegally assessed.

City Nat'l Bank v. *Paducah*, Fed. Cas. No. 2,743;
First Nat'l Bank v. *County of Douglas*, *supra*.

It is a general and well recognized rule that an injunction will lie against the collection of a tax upon property which is exempted by law from taxation. The case is, at least, as strong, where to levy a tax would be an infringement of rights

And it is cheap argument to say that the Government has "no interest" in The Indiana Manufacturing Company, after having granted it its Letters Patent. It is tantamount to saying that the Government of the United States has no interest in protecting its Letters Patent, or in seeing that its patentees are sustained in their rights thereunder. Startling proposition! That this great Government—"of the people, by the people, for the people"—has no interest in the honest execution of its contracts, because, forsooth, its statutory fees having been paid under proceedings which resulted in the grant, there is no further direct pecuniary return to the Treasury.

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Foote v. *Linck*, 5 McLean, 616; Fed. Cas. No. 4913.

See also

First Nat'l Bank of Omaha v. *County of Douglas et al.*, 3 Dillon, 298; Fed. Cas. 4,809,

In which are distinct and careful rulings on the questions, by Mr. Justice MILLER.

See also

37 Wis. 75; 42 Wis. 502; 43 Wis. 48;
43 Wis. 55, and 45 Wis. 519.

A number of authorities bearing upon the question involved in this case are collected and discussed in the opinion of Mr. Justice MATTHEWS in

Pullman Southern Car Co. v. *Nolan*, 22 Fed. Rep. 276.

Injunction will lie to restrain the collection of a tax on personal property where the enforcement of the tax would lead to a multiplicity of suits, or where the law authorizing the tax is illegal, or where there is no means of recovering back from the State taxes illegally assessed.

City Nat'l Bank v. *Paducah*, Fed. Cas. No. 2,743;

First Nat'l Bank v. *County of Douglas*, *supra*.

It is a general and well recognized rule that an injunction will lie against the collection of a tax upon property which is exempted by law from taxation. The case is, at least, as strong, where to levy a tax would be an infringement of rights

clearly derived from Federal laws, as where there is an express statutory exemption. In other words, it is no less an exemption by law when the condition is clearly deducible from existing constitution and laws, than when there is a particular act exempting the property by set phrase.

TAXATION OF PROPERTY ISSUED BY THE UNITED STATES.

Much has been said in respect to the taxation of the *shares* of national banking associations, notwithstanding that the *capital* of such associations is partly or wholly invested in United States bonds.

This Court has uniformly held that *capital stock* when so invested can not be taxed. It has held that the "shares" *may* be taxed. The questions here involved are similar, and the right of this Court to determine them is the same as in the cases in question.

In the elaborate and learned decision in the case of *People ex rel. Bank of Commerce* v. *Commissioners of N. Y.* 2 Black, 620 (17 L. ed. 451), Mr. Justice NELSON, speaking for the Court, said:

> A court may appropriately determine whether property taxed was or was not within the taxing power, but if within, not that the power has or has not been discreetly exercised.

And after some further discussion of the questions involved, quoting from *Weston* v. *City of Charleston*, 2 Pet. 449 (17 L. ed. 481), said:

> "If the right to impose the tax exists, it is a right which in its nature acknowledges no limits. It may be carried to any extent within the jurisdiction of the State or corporation which imposes it, which the will of each State and corporation may prescribe."

This decision was followed a little later by the case of *People ex rel. Bank of Commonwealth* v. *Commissioners of N. Y.* 2 Wall. 200 (17 L. ed. 793), which came up after further legislation by the State of New York; and the Court came to the following conclusion:

> Having come to the conclusion that the tax on the **capital** of the Bank of the Commonwealth is a tax upon the **property** of the institution, and which **consists** of the stocks of the United States, we do

not perceive how the case can be distinguished from the cases heretofore before the court, and reported in 2 Black 620.

Then followed the case of *People ex rel. The Banks* v. *Hoffman*, 7 Wall. 16 (19 L. ed. 57), in which after citing and quoting from *Weston* v. *Charleston*, Chief Justice CHASE said:

> Nothing need be added to this, except that in no case decided since have these propositions been retracted or qualified.
>
> . . . . . .
>
> The principle of exemption is, that the States cannot control the National Government within the sphere of its constitutional powers—for there it is supreme—and cannot tax its obligations for payment of money issued for purposes within that range of powers, because such taxation necessarily implies the assertion of the right to exercise such control.

Then followed *People ex rel. Bank of New York* v. *Supervisors*, in which the same principle was asserted.

Then came *First National Bank of Louisville* v. *Commonwealth of Kentucky*, 9 Wall. 353 (19 L. ed. 701). In this case Mr. Justice MILLER said:

> A tax upon this capital is a tax upon the bank, and we have held that when that capital was invested in the securities of the government it could not be taxed, nor could the corporation be taxed as the owner of such securities.

Now, these cases abundantly show that when capital of a corporation is invested in any class of property which is not taxable at all because issued by the Government of the United States, such capital cannot be taxed, any more than the property invested in it could be. This is the direct conclusion of this Court in the cases which have been cited. And the Court has declined to recede from or modify these decisions in any respect. They have not been "retracted or modified."

WILL TAXABLE PROPERTY ESCAPE TAXATION?

Appellees, at page 83 of their brief, attempt to make a point of the large amount of property which they say will escape taxation if appellant shall prevail in the present case.

Now, this is entirely erroneous. There is not, and has not been claimed to be, a single dollar "invested" here so as to escape taxation.

As has elsewhere been pointed out, if any moneys have been "invested" anywhere, these moneys are still subject to taxation. If anybody had $360,000 which was taxable and paid it out for these patents, which were non-taxable, the money was simply transferred from one hand to another and is as taxable in the new hands as it was in the former hands. Nothing has been withdrawn from taxation; the money is still in somebody's hands and is taxable, and presumably is taxed.

The creation of capital stock of corporations neither adds to nor subtracts from the taxable property in existence. The subsequent operations of a corporation may be profitable and result in earnings. If so, these earnings are taxable and are taxed. Some of the stockholders of the appellant company may be worth more than they were at its formation because of the earnings which have been made and paid to them. If so, they have thus been enabled to pay, and *have* paid, larger taxes than they otherwise would have done. The corporation has also paid taxes (on the undistributed earnings) and to that extent the taxing powers have been benefited.

Now, there is nothing in this that is prejudicial to taxation, or which reduces taxable property. The tendency is the other way, and no manufacturing company can escape taxation on its capital stock which does *not* consist of patent rights because it may own patent rights which it uses in its business. It is only when the capital stock is *directly* invested in patent rights that the rule of non-taxability applies. For example, should a company be incorporated with $1,000,000 capital, of which $500,000 was cash and $500,000 patent rights, the cash capital would be taxable and the patent right capital would not be taxable. If, however, a corporation is formed with $1,000,000 capital all in cash, and it afterward merely buys (or otherwise acquires) patents as an *incident* to its manufacturing business, that is a wholly different thing. It has, and can have, no bearing upon the question under consideration. Ordinary manufacturing companies are incorporated with a cash or taxable-property capital. It is

only in exceptional cases, where Letters Patent are of great and preponderating value, that companies are formed of the character of appellant and where such a question as this can arise.

Now all this is beside the merits of the case. It of course, makes no difference to this Court what the *result* of a rightful and lawful decision may be. Nevertheless, the point having been made by appellees, it has been thought best to answer it, in order that there might be no misapprehension upon the subject, or upon the question of what would be the result of what we conceive to be a proper decision of the question presented.

EVIDENCE NOT IN THIS RECORD.

Appellees, in their brief (pp. 62–65), attempt to lay a foundation for an argument by stating that certain evidence

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The bill alleges that the taxing officers **actually knew** that appellant's capital stock consisted of patent rights.

Not only this, but it shows that they **must necessarily** have known that fact.

The **first** things that come before these officers, in assessing taxes, are the "assessment lists" and "tax statements"; **and the quotations from these in the bill show that the facts in respect to this matter were conspicuously included in such lists and statements, so that the taxing officers, on first taking them up, could not fail to be informed of the facts.**

See for example, the allegations concerning 1898, beginning on page 11 of the record, in the 6th line from the bottom, and continuing to and including the 15th line on page 12.

Also lines 12 to 29, page 19, for 1900.

Then the first suit was brought in 1894, and they certainly knew about the matter then and thereafter.

only in exceptional cases, where Letters Patent are of great and preponderating value, that companies are formed of the character of appellant and where such a question as this can arise.

Now all this is beside the merits of the case. It of course, makes no difference to this Court what the *result* of a rightful and lawful decision may be. Nevertheless, the point having been made by appellees, it has been thought best to answer it, in order that there might be no misapprehension upon the subject, or upon the question of what would be the result of what we conceive to be a proper decision of the question presented.

EVIDENCE NOT IN THIS RECORD.

Appellees, in their brief (pp. 62–65), attempt to lay a foundation for an argument by stating that certain evidence is found in the record of another case; and following (pp. 65–70) attempt to support this argument by certain authorities.

Appellant's counsel knows of no law or rule under which such a practice can be justified, and will, therefore, pay no further attention to this matter.

CONCLUSION.

Much of appellant's argument in this case is devoted to traversing propositions, advanced by appellees, which appellant believes to be outside the issues of the case, but which nevertheless have been discussed for the purpose of showing that even upon such issues, the right and justice of the controversy are with the appellant. If the Court shall adopt appellant's views, it will, of course, ignore these matters in making its decision.

The real issue is, as appellant conceives it: Did appellees tax (or attempt to tax) appellant's patents, directly or indirectly? Appellees' contention is that the tax was levied, not upon apellant's patents, but upon its stock. Appellant replies that its stock was issued for these patents, and for nothing else but the patents and is merely the *representative* of the patents, and that any tax upon the stock is, therefore, a tax upon the patents—indirect if you will—but no less truly.

It may be that these taxing officers have a right under some circumstances to tax capital stock. Appellant conceives it to be unnecessary to decide that question. They may, and probably can, lawfully tax some classes of franchises, but it seems equally unnecessary to pass upon that proposition. They cannot, however, tax franchises granted by the Government of the United States in the exercise of its "paramount sovereignty."

No amount of lawfulness of *method* can give vitality to *void proceedings*. No multitude of authorities, being cases where there was a valid foundation for an action, can support a proceeding where there was no lawful foundation. No State statutes; no tribunals established under them; no obscuration of issues, or elaboration of matters not properly in issue; no "ingenuity of argumentation," can ever establish in State or municipal authorities, so long as the Constitution and laws of the United States remain as they are, the right to tax Letters Patent of the United States.

Nor, so long as courts of justice follow established rules, can any *indirect* method, however skillfully conceived, or however powerfully supported, require, or it is believed will induce, a court, especially a court of equity, to pronounce lawful, that which when attempted by direct methods must be pronounced unlawful.

The matter may be summarized as follows: The taxing officers of the State of Indiana require of appellant a return for taxation in a certain form, and furnish the blank forms for such return. Appellant complied with these requirements, and furnished the returns under oath, showing fully and fairly the property of which it was possessed. That property consisted almost exclusively of "patent rights" or Letters Patent of the United States. The correctness of these returns has never been called in question or disputed or attacked in any way. The entire capital stock was actually issued for and consisted in these Letters Patent or patent rights, and nothing else. The record further shows that except for the value of these Letters Patent or patent rights appellant would be wholly and hopelessly insolvent, and that it had no other property of any name or description, save the

moderate amount which was returned for taxation and on which all taxes due had been fully paid.

Notwithstanding all these facts appellees assumed a sheerly capricious right to ignore these duly verified and uncontradicted statements, invited by them and received by them in the course of their duty, although there was before them neither evidence nor fact to the contrary, and to levy and assess upon appellant's stock, which was issued for nothing and represented nothing but its Letters Patent or patent rights, the taxation complained of.

It seems wholly unnecessary to follow the Attorney-General through the many and intricate legal ramifications which he has presented to the Court. This case ought not, in appellant's counsel's opinion, to be determined upon any such considerations. The authorities do not, in his opinion, apply. On the contrary, those heretofore cited in this brief apply, if, indeed, citation of authorities is necessary.

This Court is not called upon to ascertain the "valuation" at all; or to determine whether or not the patents have any value. The point to be determined is whether or not the patents are taxable at all.

It seems clear that they are not—directly or indirectly—for the reasons which have been given.

The tax complained of is all wrong or all right. If patents are taxable, we make no complaint concerning the valuation.

It is respectfully submitted that the finding and decree should be reversed at the costs of appellees, and the cause remanded with directions to enter a decree in accordance with the prayer of appellant's bill of complaint.

CHESTER BRADFORD,
Solicitor and of Counsel for Appellant.

F. WINTER,
Of Counsel.

INDIANAPOLIS, INDIANA, October 15, 1902.

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No. 177.

Br. of Taylor, Moores & Hadley for Appellees.

IN THE

Supreme Court of the United States

Filed Oct. 13, 1902.

OCTOBER TERM, 1902.

INDIANA MANUFACTURING COMPANY,
Appellant,
v.
ARMIN C. KOEHNE ET AL.,
Appellees.
} Term No. 177.

BRIEF FOR APPELLEES.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1902.

INDIANA MANUFACTURING COMPANY,
Appellant,
v.
ARMIN C. KOEHNE ET. AL.,
Appellees.

No. 177.
In Equity.

APPELLEES' BRIEF.

STATEMENT.

On July 13, 1894, suit was brought in the circuit court of the United States for the district of Indiana, by the appellant herein, against the then taxing officers of Marion county, Indiana, to enjoin the collection of taxes for the years 1892, 1893, 1894, and 1895. The case was tried in the circuit court and a decree was entered perpetually enjoining the collection of the taxes claimed to be due. An appeal was taken to the circuit court of appeals for the Seventh circuit and dismissed by that court for want of jurisdiction.

Holt v. Indiana Manufacturing Co., 80 Fed. 1, 40 U. S. App. 717.

The circuit court of appeals held that the suit was not one arising under the patent laws of the United States, and that as the jurisdiction of the circuit court could rest only on the ground that complainant's constitutional rights were infringed by the laws of the state of Indiana, which were repugnant to and in controvention of the constitution of the United States, an appeal would not lie to that court and could only be taken directly to this court. The case was then appealed to this court.

This court held that "the pecuniary limitation of over $2,000.00 applied, and that the taxes in question did not reach that amount," and therefore the circuit court had no jurisdiction, and reversed and remanded the cause with directions to dismiss the bill.

> Holt v. Indiana Manufacturing Co., 176 U. S. 68.

On June 28, 1900, another bill was filed by the company in the circuit court for the district of Indiana, against Armin C. Koehne, and others, then taxing officers of Marion county, Indiana, and others, constituting the board of review of that county, and some others constituting the state board of tax commissioners of Indiana, to enjoin the collection of certain personal taxes for the years 1893, 1894, 1895, 1896, 1897, 1898, and 1900, assessed against the complainant. The taxes for the years 1893, 1894, and 1895 being the same taxes in controversy on such former appeal. The parties here are the same as the parties to the bill that was dismissed, except certain

new officers and the members of the state board of tax commissioners, who are also made parties defendant.

A demurrer was filed to the bill, and, upon the hearing, the demurrer was sustained and the bill was dismissed for want of equity.

THE PLEADINGS.

The bill, as filed on June 28, 1900, and the supplemental bill, filed January 21, 1901, are found on pp. 1 to 20, inclusive, of the record.

On June 13, 1901, a demurrer was filed, the cause for demurrer being:

1st. That it appears on the face of the bill that the complainant has an adequate remedy at law.

2nd. That the said complainant has not in or by his said bill or amendment, made or stated such a cause as doth or ought to entitle it to any relief as is thereby sought or prayed for from or against this defendant.

3rd. That the value of the subject matter of the appellant's action for the years 1893, 1894, and 1895, each separately, is beneath the dignity of this court, in that it does not show by the said bill or amendment that the matter in dispute for either of said years exceeds, exclusive of interest and costs, the sum of $2,000.00.

4th. Because neither the said bill nor amendment shows on its face any diverse citizenship between the parties complainant and defendant.

5th. Because neither the bill nor the supplemental bill shows that the action is one arising under the constitution or the laws of the United States.

6th. That it appears from said bill and amendment that this court has no jurisdiction to hear and determine this action.

7th. That said bill of complaint and amendment are wholly without equity.

(See record, pp. 21-23.)

On September 25, 1901, the cause having been heard, it was "ordered, adjudged and decreed that the bill of complaint be and the same is hereby dismissed for want of equity at the costs of complainant."

(See record, p. 24.)

That thereupon an appeal was prayed and granted to this court, the errors assigned being:

1st. That the court erred in holding that the complainant had an adequate remedy at law.

2nd. That the court erred in holding that the complainant had a suitable and adequate remedy under the laws of the state of Indiana.

3rd. That the court erred in holding that the bill of complaint herein is without equity.

4th. That the court erred in sustaining the demurrers of defendants.

5th. That the court erred in not overruling the demurrers of the defendants.

6th. That the court erred generally in its decision and decree in this cause and particularly in this in dismissing complainant's bill of complaint.

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POINTS AND AUTHORITIES.

(No. 1.)

The complainant has a plain, adequate, legal remedy under the laws of the state of Indiana and is not entitled to the interposition of a court of equity.

Sec. 1, Article 10, Indiana Constitution;
Secs. 8458, 8463, 8422, 8435, 8491, 8492, 8532, 8543 (Burns R. S. 1894); 8543 Burns R. S. 1901;
Senour v. Matchett, 140 Ind. 636;
Ogden, Treas., v. Walker, 59 Ind. 460;
Adams Express Co. v. Ohio, 165 U. S. 194, 219;
Pittsburg, etc., Ry. v. Board, 172 U. S. 32;
Small, Rec., v. City of Lawrenceburg, 128 Ind. 231;
Clement v. People, 177 Ill. 144;
Kinley Mfg. Co. v. Kochersperger, 174 Ill. 379;
Jones, Treas., v. Gas Co., 135 Ind. 595.

(No. 2.)

If the state board should affirm the assessment made by the county board, the appellant should have paid the taxes assessed and then filed a petition with the board of commissioners for recovery of the amount illegally assessed. The taxes here enjoined are the state, county and city taxes. The statutes of the state of Indiana provide a complete system for the refunding of taxes that have been illegally

assessed and collected, even after they have been distributed to the municipalities for which they were collected.

Secs. 7915, 7916, 1419 to 1425 inc., 3618 Burns R. S. 1901;
Board v. Armstorng, 91 Ind. 528;
Simonson v. Town, 5 Ind. App. 466;
Dillon on Municipal Cor. 941;
Pittsburg, etc., Ry. v. Board, 172 U. S. 32.

(No. 3.)

The bill does not show that appellant is entitled to relief in a court of equity.

(a) That the collection of the taxes assessed would produce irreparable injury.

(b) That the collection of the taxes would lead to a multiplicity of suits.

(c) That the tax would cast a cloud upon the complainant's title to real estate, and unless the bill states facts, bringing the case under one of these recognized heads, no cause for equitable interference is shown and the decree of the court sustaining the demurrer and dismissing the bill was right.

Dows v. City of Chicago, 11 Wall. 108;
Hannewinkle v. Georgetown, 15 Wall. 547;
State R. R. tax cases, 92 U. S. 575;
Milwaukee v. Koefler, 116 U. S. 219;
Shelton v. Platt, 139 U. S. 591;
Pac. Express Co. v. Seibert, 142 U. S. 339;
Pittsburg, etc., Ry. v. Board, 172 U. S. 32;
Cooley on Taxation, p. 543;

Pac. Express Co. v. Seibert, 44 Fed. 310;
Du Bois v. Board, 10 Ind. App. 347;
Secs. 8532, 8547, 8556, 8570, 7917 Burns R. S. 1894;
Schultz v. Board, 20 Ind. 178;
State v. Board, 63 Ind. 497;
Arkansas, etc., Asso. v. Madden, 175 U. S. 269;
Brewer v. City of Springfield, 97 Mass. 152;
Hunnewell v. City of Charleston, 106 Mass. 350;
Van Coot v. Board, 18 Wis. 247;
Cooley on Taxation, p. 538;
Moores v. Smedley, 6 Johns. Ch. (N. Y.) 28;
Wells, Fargo & Co. v. Dayton, 11 Nev. 161;
Sec. 3224 U. S. Rev. Stat.

(No. 4.)

The bill does not show that the value of the letters patent was included in the assessment. It must be presumed, in the absence of allegations of fraud, that the taxing officers performed their duties under the law and assessed only such property as was subject to taxation and excluded all property that was exempt. Taxing officers, under the laws of the state of Indiana, in the assessment of corporations, may assess the capital stock in an amount far in excess of the value of the tangible property.

Secs. 8411, 8435, 8440, 8458, 8459, 8460, 8463, 8491, 8492 Burns R. S. 1901;
Pittsburg, etc., R. R. Co. v. Backus, 133 Ind. 625;

Hyland v. Central Iron & Steel Co., 129 Ind. 68;
Pittsburg, etc., Ry. v. Backus, 154 U. S. 439;
Adams Express Co. v. Ohio, 165 U. S. 194;
Adams Express Co. v. Ohio, 166 U. S. 185.

(No. 5.)

Matters over which the states have control, as shares of bank stock owned by citizens or having its situs within the state, or franchises of corporations granted by the state, inheritances and descents, are proper subjects of taxation by the states, and both the stock of the corporation or the estate may be invested in federal securities.

The states have the power to tax the property and instrumentalities used in interstate commerce having a situs within the state so long as no discrimination is made against such property in favor of like property in the state.

Society for Savings v. Coite, 6 Wall. 594;
Provident Institution v. Mass., 6 Wall. 611;
Hamilton Co. v. Mass., 6 Wall. 632;
Home Insurance Co. v. New York, 134 U. S. 594, 606.

States may impose a tax upon the privilege of taking, under the statute of wills or of descents, although part of the property of the decedent was composed of United States bonds.

Plummer v. Coler, 178 U. S. 115, 135;
Murdock v. Ward, 178 U. S. 139;
Sherman v. United States, 178 U. S. 150;
Orr v. Gilman, 183 U. S. 278, 289.

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States may, under the act of congress, tax the shares of stock of a national bank to the shareholders, although the stock is wholly invested in government bonds.

Van Allen v. Assessors, 3 Wall. 573, 582;
People v. Commissioners, 4 Wall. 244, 255;
Lionberger v. Rouse, 9 Wall. 468, 473;
Palmer v. McMahon, 133 U. S. 660, 665.

A state can not exact a tax or license from a citizen of another state for the privilege or license of carrying on interstate or foreign commerce within its limits, nor impose a tax or duty upon the movements or operations between states that amounts to a regulation of commerce.

Moran v. New Orleans, 112 U. S. 69, 74;
Almy v. California, 24 How. 169;
Woodruff v. Parham, 8 Wall. 123, 138;
Crandall v. Nevada, 6 Wall. 35;
State Freight Tax Case, 15 Wall. 232, 281;
Railroad Co. v. Maryland, 21 Wall. 456, 472;
Welton v. Missouri, 91 U. S. 275;
Guy v. Baltimore, 100 U. S. 434;
Pickard v. Pullman Southern Car Co., 117 U. S. 34, 43;
Robbins v. Shelby Taxing District, 120 U. S. 489, 497;
Leloup v. Mobile, 127 U. S. 640, 648;
Lyng v. Michigan, 135 U. S. 161, 166;
McCall v. California, 136 U. S. 104, 111;
Crutcher v. Kentucky, 141 U. S. 47, 61;
Brennan v. Titusville, 153 U. S. 289, 303.

Ships or vessels engaged in interstate or foreign commerce may be taxed by the state at their legal situs, their home port and the domicil of their owners.

Hays v. Pacific Mail Steamship Co., 17 How. 596, 600;
St. Louis v. Ferry Co., 11 Wall. 423;
Morgan v. Parham, 16 Wall. 471;
Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365, 373;
Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 207.

States may tax personal property employed in interstate or foreign commerce, like other property within its jurisdiction.

Delaware R. R. Tax Case, 18 Wall. 206, 232;
Telegraph Co. v. Texas, 105 U. S. 460, 464;
Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 206;
Western Union Telegraph Co. v. Mass., 125 U. S. 530, 549;
Marye. v. Baltimore, etc., R. R. Co., 127 U. S. 117, 123;
Leloup v. Mobile, 127 U. S. 640, 649;
Pullman's Car Co. v. Pennsylvania, 141 U. S. 18;
State R. R. Tax Cases, 92 U. S. 575, 607;
Columbus Southern Ry. Co. v. Wright, 151 U. S. 470;
Cleveland, etc., Ry. Co. v. Backus, 154 U. S. 439, 445;
Western Union Telegraph Co. v. Taggart, 163 U. S. 1, 14;

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Adams Express Co. v. Ohio, 165 U. S. 194;
Pittsburg, etc., Ry. Co. v. Backus, 154 U. S. 421;
Postal Telegraph, etc., Co. v. Adams, 155 U. S. 688;
Henderson Bridge Co. v. Kentucky, 166 U. S. 150;
Adams Express Co. v. Ohio, 166 U. S. 185;
American Refrigerator Co. v. Hall, 174 U. S. 70, 75;
New York v. Roberts, 171 U. S. 658, 664;
Union Refrigerator Co. v. Lynch, 177 U. S. 149, 152.

(No. 6.)

Letters patent issued by the government of the United States is a franchise, which secures to the patentee the right to exclude every one from making, using or vending the thing patented without permission of the patentee. This is all he obtains by his letters patent and all the rights that the government guarantees to protect him in. The assessment of this franchise, or right for taxes in no way interferes with or detracts from this guarantee of the government. It is a property that may be sold, assigned, transferred by gift, sale, devise or judicial process and under the provisions of the law of Indiana is taxable.

Patterson v. Kentucky, 97 U. S. 501;
Bloomer v. McQuewan, 14 How. 539;
In re Brosnahan, 18 Fed. 62;
Jordan v. Overseers, 4 Ohio 295;
State v. Telephone Co., 36 Ohio St. 296;

Tod v. Wick, 36 Ohio St. 370;
Livingstone v. Van Ingen, 9 John. (N. Y.) 507;
Patterson v. Commonwealth, 74 Ky. 311;
Shaw, etc., Co. v. City of Bedford, 19 Fed. 753;
Ager v. Murray, 105 U. S. 126;
Carver v. Peck, 131 Mass. 291;
U. S. Rev. Stat. §5046;
Campbell v. Haverhill, 155 U. S. 610.

(No. 7.)

Stock of a domestic manufacturing company which is largely or wholly invested in letters patent of the United States is taxable under the laws of the state of Indiana.

Secs. 5051, 5060, 5071 Burns R. S. 1901;
People v. Campbell, 138 N. Y. 543;
People v. Wemple, 61 Hun. (N. Y.) 53, 58, 65;
Crown Cork & Seal Co. v. Md., 87 Md. 687;
Storage Battery Co. v. Board, 60 N. J. L. 66;
Marsden Co. v. Assessors, 61 N. J. L. 641;
Bank of Commerce v. Tenn., 161 U. S. 134;
Van Allen v. Assessors, 70 U. S. 573;
National Bank v. Commonwealth, 76 U. S. 353;
Patterson v. Kentucky, 97 U. S. 501;
R. R. Co. v. Peniston, 85 U. S. 5;
Central Pacific R. R. Co. v. California, 162 U. S. 91;
Western Union Telegraph Co. v. Mass., 125 U. S. 530;

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Western Union Telegraph Co. v. Taggart, 163 U. S. 1;
Society for Savings v. Coite, 6 Wall. 594;
Prov. Inst. v. Mass., 6 Wall. 611;
Home. Ins. Co. v. New York, 134 U. S. 594;
Plummer v. Coler, 178 U. S. 115;
Murdock v. Ward, 178 U. S. 139;
Sherman v. U. S., 178 U. S. 150;
Orr v. Gilman, 183 U. S. 278.

ARGUMENT.

THE COMPLAINANT HAS A PLAIN, ADEQUATE, LEGAL REMEDY UNDER THE LAWS OF THE STATE OF INDIANA AND IS NOT ENTITLED TO THE INTERPOSITION OF A COURT OF EQUITY.

Complainant was not entitled to relief in a court of equity in this cause for the reason that there was a plain and adequate remedy at law. That remedy complainant did not pursue. What was the remedy pointed out by the statute of Indiana?

Sec. 1, Art. 10, of the Indiana constitution, reads as follows:

> "The general assembly shall provide, by law, for a uniform and equal rate of assessment and taxation; and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both real and personal, excepting such only, for municipal, educational, literary, scientific, religious, or charitable purposes as may be especially exempted by law."

Sec. 48 of the tax law of 1891, being §8458 R. S., 1894 and 1901, reads as follows:

> "On the first day of April of each year, or as soon thereafter as practicable, and before the first day of June, the assessor shall call upon each person required by this act to be assessed, and furnish him or her with the proper blanks for the purpose, and thereupon such person shall make to such assessor a full and correct description of all the personal property, of which such person was the owner on the first day of April of the current year, and such person shall also, at the same time, make separate, full and true statements in like manner, in writing, distinctly setting forth in each a correct description of all the personal property held, possessed or controlled by him as executor, administrator, guardian, trustee, receiver, partner, agent, attorney, president or accounting officer of a corporation, consignee, pawnbroker, or in any representative or fiduciary capacity, and he shall fix what he deems the true cash value thereof to each item of property for the guidance of such assessor, or shall determine and settle the value of each item, after examination of such statement, and also an examination under oath of the party or any other person, if he deems it necessary. In determining and settling such valuation, he shall be governed by what is the true cash value, such being the market or usual selling price at the place where the property shall be at the time of its liability to assessment, and if there is no market value, then the actual value. In making the valuation, annuities and royalties shall be valued at their present cash

value. For the purpose of making such statements, the person to be assessed shall receive the proper blanks from the assessor."

The above section provides for the listing of personal property generally throughout the state.

Sec. 53 of the Indiana tax law of 1891, being §8463, R. S. 1894 and 1901, contains a form of schedule for such property.

All domestic corporations are assessed in Indiana pursuant to statute specifically governing the same. All of the hundreds of corporations in Indiana, including appellant, are assessed under the same statutes by similar boards.

Sec. 12 of the Indiana tax law, being §8422, R. S. 1894 and 1901, governing the assessments of domestic corporations, reads as follows:

"All corporate property, including capital stock and franchises, except where some other provision is made by law, shall be assessed to the corporation as to a natural person in the name of the corporation. The place where its principal office in this state is situated shall be deemed its residence, but if there be no principal office in the state, then such property shall be listed and taxed at any place in the state where the corporation transacts business."

Sec. 25 of the tax law, being §8435, R. S. 1894 and 1901, provides for the taxation of franchises, and is as follows:

"Every franchise granted by any law of this state, owned or used by any person or corporation, and

every franchise or privilege used or enjoyed by any person or corporation, shall be listed and assessed as personal property."

Sec. 73 of the tax law of 1891, being §8491, R. S. 1894 and 1901, provides how all domestic corporations are required to make return of their property for taxation. This applies to all domestic corporations in Indiana, and reads as follows:

"Every street railroad, water works, gas, manufacturing, mining, gravel road, plank road, savings bank, insurance and other associations incorporated under the laws of this state (other than railroad companies and those heretofore specifically designated), shall, by its president or other proper accounting officer, between the first day of April and the first day of June of the current year, in addition to the other property required by this act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

"1st. The name and location of the company or association.

"2nd. The amount of capital stock authorized and the number of shares in which such capital stock is divided.

"3rd. The amount of capital stock paid up.

"4th. The market value, or if no market value, then the actual value of the shares of stock.

"5th. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

"6th. The value of all tangible property.

"7th. The difference in value between all tangible property and the capital stock.

"8th. The name and value of each franchise or privilege owned or enjoyed by such corporation.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of state. In case of the failure or refusal to make report, such corporation shall forfeit and pay $100.00 for each additional day such report is delayed beyond the first day of June, to be sued and recovered in any proper form of action in the name of the state of Indiana, on the relation of the prosecuting attorney, such penalty, when collected, to be paid into the county treasury. And such prosecuting attorney in every case of conviction shall be allowed a docket fee of $10.00, to be taxed as costs in such action."

It was upon this statute, and pursuant to its forms, that the appellant made its return for the years 1893, 1894, 1895, 1896, 1897, 1898, and 1900. (Record, p. 3.) When these sworn statements of corporations are made, as is shown in this record, they are handed to the county auditor and by him turned over to the county board of review. This board of review thereupon takes these lists and makes the original assessment against all domestic corporations in Indiana.

The law governing these assessments by the county board of review is set forth in §74 of the tax law of 1891, being §8492, R. S. 1894 and 1901, as follows:

"Such statement shall be scheduled by the assessor, and such schedule, with the statement so scheduled, shall be returned by the assessor to the county auditor. The auditor shall annually, on the meeting of the county board of review, lay before said board the schedule and statements herein required to be returned to him, and said board shall value and assess the capital stock and all franchises and privileges of such companies or associations in the manner provided in this act, and the said auditor shall compute and extend the taxes for all purposes on the respective amounts so assessed, the same as may be levied on other property in such towns, cities or other localities in which such companies or associations are located. In all cases where the capital stock of any such corporation exceeds in value that of the tangible property listed for taxation, then such capital stock shall be subject to taxation upon such excess of value; where no tangible property is returned or found, and the capital stock has a value, it shall be assessed for its true cash value. But where the capital stock, or any part thereof, is invested in tangible property, returned for taxation, such capital stock shall not be assessed to the extent that is so invested. Every franchise or privilege of any such corporation shall likewise be assessed at its true cash value. Where the full value of any franchise is represented by the capital stock listed for taxation then such franchise shall not itself be taxed; but in all cases where the franchise is of greater value than the capital stock, then the franchise shall be assessed at its full cash value, and the capital stock in such case shall not be assessed."

The court will observe that this board of review values all capital stock, all franchises and privileges of all domestic corporations in Indiana. The court will further observe that the above section fully defines exactly how domestic corporations shall be assessed in Indiana. We will discuss this section further along in the brief. Our purpose now is to simply show the method by which taxes are assessed and the remedies for illegal or void assessments.

Sec. 114 of the tax law of 1891, being §8532, R. S. 1894 and 1901, provides for the organization, duties and powers of the county board of review. It met annually on the first Monday after the fourth day of July, until amended by an act of 1895, which fixes the time at the third Monday in June. Two weeks previous notice of its meeting is given by the county auditor.

After the county board of review has made such original assessments against a domestic corporation, if such corporation feel aggrieved, it is its duty to appeal to the state board of tax commissioners. This appeal is provided for by statute.

Sec. 125 of the tax law of 1891, being §8543, R. S. 1894, reads as follows:

> "Appeals shall lie from the decision of any county board of review to the state board of tax commissioners, which shall herein determine the same in such manner as it may by its rules prescribe, and certify its decision, which shall be final, to the proper county auditor: Provided, That all such appeals shall be allowed within such time and under such restrictions as may be prescribed by the

state board of tax commissioners; but the pendency of such appeals shall not operate to stay the collection of any tax, except by special order of the board and upon such conditions as it may prescribe."

This section was amended in 1895 (Acts 1895, p. 79, §8543, R. S. 1901), so that the amended section was in force when the assessment for 1895, 1896, 1897, 1898, and 1900 was made against the appellant. The amended section reads as follows:

"Any person, partnership, company, association or corporation dissatisfied with the action of the county board of review, upon any original assessment or upon any application to increase or decrease the assessment made by any township or county assessor, or upon any order for the assessment of hidden or omitted property, shall have the right to appeal from the order or assessment of the county board of review to the state board of tax commissioners; and in like manner any township or county assessor, or any member of the county board of review, or any taxpayer or taxpayers, of the county, shall have the right to appeal to the state board of tax commissioners from any original assessment, made by said county board of review, and from any order of the county board of review increasing or decreasing any assessment or refusing to increase the same, or to assess hidden or omitted property, upon giving notice of such appeal within five days after the adjournment of the county board of review, to the county auditor of the county from which said appeal is to be taken. Upon receiving notice of

such appeal, the auditor of such county shall forthwith make out a statement, in writing, showing concisely the substance of the complaint made, if any, and the action of the board thereon, and shall transmit the same by mail to the auditor of state, who shall lay the same, for its action, before the state board of tax commissioners when it shall convene: Provided, That such state board of tax commissioners may make such regulations in regard to the taking of appeals, not inconsistent herewith, as they may deem necessary to protect the rights of the parties questioning their assessments. Such state board of tax commissioners shall, upon appeal from an assessment by the party aggrieved, assess the property in controversy. The auditor of state shall certify to the auditors of the several counties, all such changes made by said state board of tax commissioners, showing in the first column the assessment made by the county or township officials, and in the second column the assessment as made by the said state board of tax commissioners, which latter amounts shall be by said auditor extended on the tax duplicates in lieu of the amounts fixed by said township or county officials, or by said county board of review: Provided, further, That it shall not be necessary for said auditor of state to issue separate notices of certificates with reference to each person affected, but he may include all persons affected in any one county in one or more notices and certificates: Provided, further, That the pendency of such appeals shall not operate to stay the collection of any tax, except by special order of the board, and upon such conditions as it may prescribe."

The sections of the Indiana tax law above quoted constituted a complete remedy by appeal. Nowhere in the bill is there anything shown that complainant every attempted to have the assessments changed from the amount as fixed by the board of review for the years 1893, 1894, 1895, and 1896, nor from the assessment as fixed by the state board of tax commissioners for the years 1897, 1898, and 1900. It is not only the privilege of any person feeling aggrieved at the assessment of any county board of review in Indiana to appeal to the state board of tax commissioners; but it is a condition precedent to his right to recover that he must appeal.

The taxpayer can not sue for the recovery of money, nor can he enjoin the collection of taxes until he has pursued the statutory remedy provided for such cases.

This question is conclusively stated in the case of Senour v. Matchett, 140 Ind. 636. In this case the county board of review had added to the appellee's tax list $10,000.00 against "greenbacks" held by Matchett on the first day of April. "Greenbacks," at that time, 1892, were not taxable. Matchett did not appeal from the assessment of the county board of review to the state board of tax commissioners, as he should have done. Matchett averred that he had no notice that the board of review was attempting to increase his assessment, and he had no remedy at law; that the state board of tax commissioners had not made any rules or regulations governing appeals from the county board of review; and, as a matter of fact, that he did not own any "greenbacks" on the first day of April, 1892, the

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date of the assessment. He thereupon attempted to enjoin the treasurer of Marshall county from collecting these taxes. The supreme court of Indiana, after quoting the law governing appeals and, although the assessment of "greenbacks" was utterly void, on page 639 say:

> "Notwithstanding this fact, no steps were taken by him to prosecute an appeal to the state board of tax commissioners, but he abided his time until his taxes became due, and then refused to pay those accruing upon the amount added to his list by the board of review, and commenced this action for injunctive relief."

Further along, on the subject of collateral attack against the assessment made by the county board of review, on page 639, the court say:

> "While it is true that the board had no right, under the law then existing, to add legal tender notes held in a *bona fide* manner by appellee, still it was within its province to determine whether he had temporarily converted his taxable money into these notes for the express purpose of abating the payment of taxes thereon; and if it made the mistake, or reached a wrong conclusion, it can not be held, upon a collateral attack, that its action or decision therein was void, and if he was guilty of such a conversion a court of equity will not interfere. Ogden, Treas., v. Walker, 59 Ind. 460. In this tribunal, which possesses *quasi* judicial powers, is lodged, by law, exclusive original jurisdiction over the subject matter of revising and correct-

ing tax assessments. And when it once obtains jurisdiction over the person by virtue of notice provided by the statute, or upon appearance of the taxpayer, whose list is called in question, its action or decision in the matter, right or wrong, is binding upon him until set aside or vacated by an appeal or some other direct authorized proceeding. See Jones, Treas., v. Cullen, 40 N. E. 124, and cases cited therein; in Jones, Treas., v. Rushville Natural Gas Co., 135 Ind. 595."

Then, taking up the direct question here presented, viz., the right to enjoin the treasurer from collecting taxes on erroneous assessments, the court say on page 640:

> "The legislature have created a board of review in each county, and likewise a state board of tax commissioners, and clothed each with certain appropriate powers and duties, and provided for an appeal from the former to the latter, a person aggrieved by reason of the errors or irregularities that may enter into the decisions or orders of the board of review, and which may render the same voidable, but not void, must invoke the remedy provided by appeal, and will not be permitted to assail the same in a court of equity. In this there is no hardship, for it must be presumed that the appel lant tribunal, as is enjoined upon it by law, will give the appealing party a fair hearing and administer equal justice to all; neither permitting property liable to taxation to escape the burden thereof, nor impose upon the citizen an obligation to pay a tax upon property or means that he does not own, or which, if he does, are exempt from taxation by

> virtue of law. The contention of appellee that he could not appeal for the reason that the state board of tax commissioners had not made and provided the necessary rules and regulations relative to appeals to that body, is without merit. The law granted him an appeal as a matter of right; he failed to exercise it in any way, and the neglect of the state board to provide regulations and furnish blanks is not an available excuse for his failure to demand an appeal."

This case, it seems to us, is conclusive against the right of appellee to injunctive relief.

> "Construction by the state courts of last resort, of state constitutions and statutes will ordinarily be accepted by this court as controlling."
>
> Adams Express Co. v. Ohio, 165 U. S. 219.

The proposition laid down in the Matchett case, supra, in principle is entirely supported by this court in the Pittsburgh Railway case, 172 U. S. 32. There the appellant, as here, failed to appeal from the decision of the board of public works to the circuit court; but instead thereof hastened to the federal court and prayed for an injunction. The court below justly denied the right, and this court affirmed the decision, using this language on page 48:

> "The plaintiff, upon its own showing, having made no attempt to avail itself of the adequate remedies provided by the statute of the state for

> the review of the assessment complained of, is not entitled to maintain this bill."

The same doctrine is supported by the following case: Small, Receiver, v. City of Lawrenceburg, 128 Ind. 231. On page 234 this language appears:

> "The assessor was charged with the duty of fixing the value on the property. Secs. 3071, 3072, R. S. 1881. And if the parties were aggrieved on account of being assessed with a greater amount than should have been charged against them, they had a remedy by appearing before the city board of equalization."
>
> Clement v. People, 177 Ill. 144.

The law of appeals from assessments in Illinois is similar to that of Indiana. The supreme court of Illinois, on page 144, say:

> "The charge of injustice and lack of uniformity with other assessments in the county need not be further noticed than to say §86 of the revenue law affords a party so aggrieved the only remedy for the correction of an injustice or exclusive valuation of its property for the purposes of taxation, unless it is shown to have been fraudulently made. We have repeatedly held that the courts have no power to revise an assessment of a tax merely because of a difference of opinion as to the reasonableness of the valuation placed upon the property."
>
> Kinley Manufacturing Co. v. Kochersperger, 174 Ill. 379.

Discussing this duty of appeal to the court from the decision of the county board, the supreme court of Illinois, refusing an injunction because the company had not pursued the remedy provided by statute, say on page 381:

> "It is the duty of the county board to determine every case brought before it. * * * It is a familiar rule that where there is a complete remedy at law, equity will not interfere."

It was the duty, then, of appellant to have applied to the state board of tax commissioners from the action of the county board of review.

All officers are presumed to do their duty. The state board of tax commissioners, it must be presumed, would have done its duty under the law and under the oaths of its members. If there had been an excessive assessment, the state board of tax commissioners would have reduced it. If there had been an illegal assessment, it must be presumed that the state board of tax commissioners would have corrected such errors.

The state board of tax commissioners is composed of the governor, who is chairman; the secretary of state, the auditor of state, and two persons appointed by the governor of different political parties. The two appointees are called commissioners. These five constitute the board. They convene on the second Monday of July of each year at Indianapolis, and assess railway property, rolling stock, telegraph, palace car, dining car, etc., companies, and hear appeals from county boards of review. The evidence is all submitted and the hearing is entirely *de novo*.

The appellee, not having appealed, the presumption is that the assessment made by the county board of review is correct. The presumption runs all the way through this case.

Senour, Treas., v. Matchett, supra.

In Jones, Treas., v. Gas Co., 135 Ind. 595, in reversing the trial court because it granted an injunction against the treasurer, restraining him from collecting the taxes fixed by the county board of review on the gas company, the supreme court of Indiana, on page 598, use this language:

> "The board of equalization not only has the power to assess the capital stock of a corporation where the value of such stock exceeds the value of the tangible property, but it is its duty to do so. The board in such cases has exclusive original jurisdiction, and, while its action is not strictly judicial, it is at least *quasi* judicial and binds every one within its jurisdiction."

The court then proceeds to a discussion of the assessment of capital stock above the value of tangible property as returned by the company; and as that point was pressed by the appellant herein, we quote the further language of the Indiana supreme court from page 598, supra:

> "It is true that such board can not legally assess capital stock where the capital is invested in tangible property listed for taxation, unless such stock exceeds in value the property in which it is invested, but who shall determine the question as to whether the stock is of greater value than the

tangible property? The board of equalization, we think, must decide that question. If it makes a mistake and reaches a wrong conclusion, can it be said that its assessment is void? We think not. We think it is binding on the corporation assessed, until set aside or vacated by appeal, or some other authorized direct proceeding. It has always been the policy of the state to make the assessment and collection of taxes summary, and to hold now that a mere mistake or error of judgment in the officers charged with the duty of assessing and collecting taxes renders the tax void and subjects the officers to injunction proceedings, is to reverse this long settled policy."

Having thus, we trust, shown that the sole remedy of appellee was appeal, let us proceed to the next step.

Having appealed, the presumption is that the state board of tax commissioners would have done its duty and corrected its errors and remitted all void assessments, if any there were. This is a presumption of law that necessarily arises.

REFUNDING OF TAXES.

IF THE STATE BOARD SHOULD AFFIRM THE ASSESSMENT MADE BY THE COUNTY BOARD, THE APPELLEE SHOULD HAVE PAID THE TAXES ASSESSED AND THEN FILED A PETITION WITH THE BOARD OF COMMISSIONERS FOR RECOVERY OF THE AMOUNT ILLEGALLY ASSESSED.

STATE AND COUNTY TAXES.

THE TAXES HERE ENJOINED ARE THE STATE, COUNTY AND CITY TAXES.

The statute of Indiana provides for the refunding of these taxes, all of them. Sec. 1 of the tax law of 1853, being §5813, R. S. 1881, §7915, R. S. 1894 and 1901, covers the refunding of all county taxes wrongfully assessed and collected and makes it the duty of the board of county commissioners to repay the same. Sec. 2 of said act, being §5814, R. S. 1881, §7916, R. S. 1894 and 1901, provides for the refunding of taxes paid into the state treasury, and provides that the auditor of state shall audit and the treasurer of state shall pay the same out of the state treasury. Said sections read as follows:

> "Section 1. In all cases where any person or persons or body politic or corporate shall appear before the board of commissioners of any county in this state, and establish, by proper proof, that such person or body politic or corporate has paid any amount of taxes which were wrongfully assessed against such person or body politic or corporate in such county, it shall be the duty of said board to order the amount, so proved to have been paid, to be refunded to said payer from the county treasury,

so far as the same was assessed and paid for county taxes.

"Sec. 2. In all cases where a portion of the amount so wrongfully assessed and paid shall have been for state purposes, and shall have been paid into the state treasury, it shall be the duty of the said board of commissioners to certify to the auditor of state the amount so proven to have been wrongfully paid, under the seal of said board of commissioners; and the auditor of state shall, thereupon, audit the same as a claim against the treasury, and the treasurer of state shall pay the same out of any moneys not otherwise appropriated."

If the county treasurer has already paid into the state treasury the appropriation of money due the state, then the act of March 9, 1889, being §§1419-1425, R. S. 1894 and 1901, affords an adequate remedy to the taxpayer. So much of the first section of this statute as is in point, reads as follows:

"Any person or persons having or claiming to have a money demand against the state of Indiana, arising at law or in equity, express or implied, accruing within fifteen years from the time of the commencement of the action, may bring suit against the state therefor, in the superior court of Marion county, Indiana, by filing a complaint with the clerk of the said court, and procuring a summons to be issued by said clerk, which summons shall be served upon the Attorney-General of Indiana, thirty days before the return day of the summons."

REFUNDING CITY TAXES.

The latter part of §59 of the act of March 7, 1873, being §3618, R. S. 1894 and 1901, provides for the refunding of taxes erroneously assessed and collected by cities. So much of said section as is applicable to this case reads as follows:

> "The common council shall then proceed to fix the amount and rate of tax to be levied on property and polls within such city, and the clerk shall have power, at any time, to correct erroneous assessments that shall be proven and made apparent to him, and the common council may, at any time, order the amount erroneously assessed against and collected from any taxpayer to be refunded to him."

In Board v. Armstrong, 91 Ind. 528, at page 535, the court said:

> "Sec. 5813, R. S. 1881 (being §7915, R. S. 1884 and 1901), to which reference has been made, changes the rule recognized by the authorities, cited as above, on the subject of refunding taxes, and requires taxes, however voluntarily paid, to be refunded upon proof that such taxes were *wrongfully* assessed."

The bill correctly states that Koehne, treasurer of Marion county, is by law also the treasurer of the city of Indianapolis; and he collects all the taxes due the state from the county of Marion; thus he is the treasurer for the

state of Indiana, the county of Marion, and the city of Indianapolis in collecting all taxes and distributing them. He is thus the trustee and agent of all three of the taxing governments in the collection of taxes. He collects every dollar of taxes assessed for all purposes against the appellant. We have shown above that there is an ample statutory remedy for collecting taxes already paid over to state, county and city. The methods above set forth for the collection of taxes, either illegally or fraudulently assessed, are methods that are provided for by statute as construed by the supreme and appellate courts of Indiana. In other words, they are statutory remedies.

But, independent of all statutes and their constructions, the common law affords ample remedy for the collection of taxes illegally or fraudulently assessed. This question has been fully passed upon, both by the supreme and the appellate courts of Indiana.

Board v. Armstrong, 91 Ind. 528;
Simonson v. Town, 5 Ind. App. 466;
Dillon on Municipal Cor., 940.

There is no city treasurer of the city of Indianapolis. All of the money for the city of Indianapolis always remains in the hands of the county treasurer of Marion county until it is expended. The office of city treasurer for the city of Indianapolis was long ago abolished, so that the county treasurer retains all of the money in his hands belonging both to the county of Marion and the city of Indianapolis until it is expended.

There is, however, a much shorter and more direct method than to wait until the money has been paid over by the county treasurer to the state, and that method is the one that appellee should have adopted, provided it had first appealed to the state board and such board had not corrected its assessment. Appellant was bound to use diligence and adopt the shortest and most convenient method of having refunded the taxes alleged to be illegally collected. This remedy was to file a petition with the board of county commissioners for the refunding of all illegal and void taxes paid to the county treasurer for the county and state and city governments. This was a duty, and if appellant neglected to perform it then it was guilty of laches, and can not now complain. The remedies, therefore, for the correction of the assessment, if the assessment was erroneous, is clearly pointed out, and if the property was wrongfully assessed, the statutes above quoted give a plain, adequate and simple remedy to determine these amounts and recover the same.

THE BILL DOES NOT SHOW THAT APPELLANT IS ENTITLED TO RELIEF IN A COURT OF EQUITY.

What does the bill show? It shows that appellant, The Indiana Manufacturing Company, was organized under the Indiana law governing the incorporation of manufacturing and mining companies; that at the time of the assessment for 1893, it had a capital stock of $360,000 (see record, page 2); that at that time it possessed four letters patent of the United States of the value of $25,000 (record, page 4); it was possessed of tangible property and assets to the

amount of $8,900.00. The bill does not show the value of the $360,000 stock, nor is it claimed that the stock was not worth $36,000 (the amount of that year's assessment) over and above the $25,000, the value of the letters patent.

(b) In 1894, the bill states that the company "was possessed of tangible property and assets to the amount of $7,645;" that it was "possessed of four letters patent of the United States of the value of $25,000." The value of the $360,000 of stock is not given, nor is it claimed that the market, or actual, value of the stock over and above the $25,000, the value of letters patent, was not more than the amount of the assessment for that year.

(c) In 1895, the bill does not show the value of the letters patent nor the number; nor the value of the capital stock. The stock was assessed at $36,000.

(d) In 1896 (record, page 8), as shown by the bill, complainant refused to give the information required by the statute governing the taxation of such corporations, and evaded all questions which would throw any light on the value of the capital stock. The county board of review raised the assessment to $180,000 (record, page 9), yet there is no allegation that the stock was not of that value over and above the value of the letters patent owned by it, which presumptively remained the same as before—$25,000. No appeal is shown to have been taken from the assessment, nor were any steps taken whatever to have the amount changed in any manner.

(e) In 1897 (record, page 10), return was made on the assessment lists for $6,544.00, which was fixed by the

board of review at $6,435.00. Here, as in the previous year, no information was furnished from which the value of the capital stock could be ascertained. An appeal was taken to the state board of tax commissioners, and the assessment was raised to $500,000. It is not shown in the bill that complainant ever appeared before the state board, or made any attempt to furnish it any information upon which they might pass their decision, and it is not alleged that the capital stock was not worth $500,000 over and above the value of the letters patent.

(f) In 1898 (record, page 11), the bill shows that the same course was pursued by the complainant that was pursued in 1897, and the state board fixed the assessment for these years at $500,000 and $360,000 respectively.

For the taxes of 1900 (record, page 18), the bill alleges that the appellant returned for taxation all its personal property at $3,503; that the county board of review then acting under an injunction from the United States circuit court for the district of Indiana, did not disturb this amount, but referred it to the tax assessor; that, thereupon, a taxpayer appealed to the state board of tax commissioners, and an assessment upon appellant's property was fixed at $360,000.

The bill does not allege that the appellant appeared before the state tax board, or offered any objection to the assessment, or furnished any evidence whatever of the value of its property; nor is there any suggestion anywhere in the bill that either for this year or for any of the preceding years, there was any overvaluation of the cap-

ital stock, and property of said appellant; nor is there any suggestion that the capital stock of said appellant was not worth as much as it was assessed for, at any of the years.

Appellant did not, for any of the years covered in the bill, appeal to the state board of tax commissioners. For some of the years other taxpayers intervened and appeaied, but appellant did not appeal for any year; but each time appellant immediately proceeded to the United States circuit court for the district of Indiana and sought, by injunctive methods, to prevent any assessment whatever upon any of its property other than the naked tangible property of the company.

The bill shows a continual and persistent course of evasion on the part of complainant, and an utter disregard of the tax laws of the state and an attempt to fix its own assessment and to say upon what and how much property it should be taxed. This conduct, of itself, should be sufficient to deprive the complainant of any standing in a court of equity.

We need not, however, rely upon the conduct of the complainant to sustain the court's ruling, although we deem such conduct alone sufficient to sustain the ruling dismissing the bill for want of equity. The bill is insufficient in other particulars to entitle complainant to the relief sought. It is established by the decided cases of this court that a bill of equity will not lie to restrain the collection of taxes, unless there exists some special circumstance bringing the case under some recognized head of equity jurisdiction. In other words, before taxes will be enjoined, the bill must show:

(a) That the collection of the taxes assessed would produce irreparable injury;

(b) That the collection of the taxes would lead to a multiplicity of suits;

(c) Or, that the tax would cast a cloud upon the complainant's title to real estate. Unless the bill states facts bringing the case under one of these recognized heads, no cause for equitable interference is shown, and the decree of the court sustaining the demurrer and dismissing the bill was right.

In Dows v. City of Chicago, 11 Wall. 108, in a suit to restrain the collection of taxes levied by the city of Chicago, Mr. Justice Field, speaking for the court, said:

> "Assuming the tax to be illegal and void, we do not think any ground is presented by the bill justifying the interposition of a court of equity to enjoin its collection. The illegality of the tax and the threatened sale of the shares for its payment constitute of themselves alone no ground for such interposition. There must be some special circumstances attending a threatened injury of this kind, distinguishing it from a common trespass, and bringing the case under some recognized head of equity jurisdiction before the preventive remedy of injunction can be invoked. It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom

> the duty is devolved of collecting the taxes, may derange the operations of government and thereby cause serious detriment to the public. No court of equity will, therefore, allow its injunction to issue to restrain their action except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law. It must appear that the enforcement of the tax would lead to a multiplicity of suits, or produce the irreparable injury, or where the property is real estate, throw a cloud upon the title of the complainant, before the aid of a court of equity can be invoked."

The reason why the federal court will not stay the hand of state officers in the collection of taxes and the grounds upon which a court of equity will grant relief are so admirably stated in the above case by the learned justice that but little is left to say, and the case is one which is cited authoritatively in all later decisions of this court on the subject.

In Hannewinkle v. Georgetown, 15 Wall. 547, a suit to enjoin the selling of real estate for a tax, in affirming a decree dismissing the bill, Justice Hunt restated the rule as laid down in the Dows case.

Five years after the decision of the Dows case this court, in the State Railroad Tax Cases, 92 U. S. 575, again reconsidered all of the cases upon this subject, to that date. The evils flowing from the ready issuance of injunctions by the federal courts, restraining state officers from collecting taxes, were pointed out in an opinion rendered by Justice Miller, on page 613:

"We propose to consider these questions for a moment, because the immense weight of taxation rendered necessary by the debts of the United States, of the several states, and of the counties, cities, and towns, has resulted very naturally in a resort to every possible expedient to evade its force. It has been repeatedly decided that neither the mere illegality of the tax complained of, nor its injustice nor irregularity, of themselves, give the right to an injunction in a court of equity. (Citing authorities.) The government of the United States has provided, both in the customs and in the internal revenue, a complete system of corrective justice in regard to all taxes imposed by the general government, which, in both branches, is founded upon the idea of appeals within the executive departments. If the party aggrieved does not obtain satisfaction in this mode, there are provisions for recovering the tax after it has been paid, by a suit against the collecting officer. But there is no place in this system for an application to a court of justice until after the money is paid. That there might be no misunderstanding of the universality of this principle, it was expressly enacted, in 1867, that 'No suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court.' (Rev. Stat. §3224.) And though this was intended to apply alone to taxes levied by the United States, it shows the sense of congress of the evils to be feared if courts of justice could, *in any case*, interfere with the process of collecting the taxes on which the government depends for its continued existence. It is a wise policy. It is founded in the simple philosophy derived from the expe-

> rience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully other instrumentalities and other modes of procedure are necessary, than those which belong to courts of justice."

In Milwaukee v. Koefler, 116 U. S. 219, in reversing a decree of the circuit court for the Eastern district of Wisconsin, setting aside the assessment of a tax and enjoining the city and its officers from collecting it, this court, by Justice Miller, reaffirmed the principles enunciated in the Dows case, quoting therefrom the quotation given above.

In Shelton v. Platt, 139 U. S. 591, this court, in reversing the case of the United States Express Co. v. Allen, 39 Fed. 712, enjoining the collection of the tax, Mr. Justice Fuller, on page 594, says:

> "The question whether, even if the act under which the tax in question was imposed, were unconstitutional, and the tax void, complainant on behalf of the express company was entitled to the relief accorded, meets us on the threshold. It was ruled in Dows v. Chicago, 11 Wall. 108, 112, that a suit in equity will not lie to restrain the collection of a tax on the sole ground that the tax is illegal, but that there must exist, in addition, special circumstances bringing the case under some recognized head of equity jurisdiction, such as that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title of the complainant."

In Pacific Express Co. v. Seibert, 142 U. S. 339, Mr. Justice Lamar, in affirming the decree of the circuit court for the Western district of Missouri (Pacific Express Co. v. Seibert, 44 Fed. 310), dismissing the bill for want of equity, on page 348, said:

> "The primary and fundamental ground on which the maintenance of such a suit rests is the unlawfulness of the tax against which relief is sought, or, in other words, the invalidity or unconstitutionality of the legislative act under the authority of which the tax is imposed. It is true that this ground is not in itself sufficient. But when the illegality of the tax, or the invalidity or unconstitutionality of the legislative act under which it is imposed is established, it becomes necessary to go further, and make out a case that can be brought under some recognized head of equity jurisdiction: such as that the collection of the tax sought to be restrained may entail a multiplicity of suits; or cause some other irreparable injury, as, for instance, the ruin of complainant's business; or, where the property is real estate, throw a cloud upon the title of the complainant."

In Pittsburg, etc., Ry. v. Board of Public Works, 172 U. S. 32, this proposition was thoroughly discussed. On page 37 the court, by Mr. Justice Gray, lays down the fundamental proposition above stated, as follows:

> "The collection of taxes assessed under the authority of a state is not to be restrained by writ of injunction from a court of the United States, un-

> less it clearly appears, not only that the tax is illegal, but that the owner of the property taxed has no adequate remedy by the ordinary processes of the law, and that there are special circumstances bringing the case under some recognized head of equity jurisdiction."

With these principles thus reiterated by this court in view, do the facts stated in appellant's bill show that it is entitled to injunctive relief?

NO REAL ESTATE INVOLVED.

First. The bill does not show that any real estate is involved in this controversy, or that complainant had any real estate; therefore, the tax or the collection thereof would not throw a cloud upon its title, and we need not further consider this question.

> Dows v. Chicago, 11 Wall. 108;
> Milwaukee v. Koefler, 116 U. S. 219;
> Shelton v. Platt, 139 U. S. 591, 596;
> Cooley on Taxation, 543.

NO MULTIPLICITY OF SUITS.

Second. The bill alleges (record, page 15) that "were it possible to recover such moneys after payment, a multiplicity of suits would be necessary." The bill does not show how a multiplicity of suits would be necessary. As was said by Judge Caldwell: "It is real and not imaginary suits; it is probable, and not possible danger, of a

multiplicity of suits that will warrant an assumption of jurisdiction on that ground."

> Pacific Express Co. v. Seibert, 44 Fed. 310, 315.

Under the law of Indiana but one suit would be necessary to recover back all moneys, if wrongfully assessed. This question was fully and conclusively decided by the appellate court of Indiana, in the case of DuBois v. Board, 10 Ind. App. 347. In that case DuBois claimed to have paid a considerable sum on account of taxes erroneously assessed and collected. Part of it was due the state, part the county, and part the town of Crown Point. He filed a claim before the board of county commissioners, and on its being refused he immediately brought suit in the circuit court of the county. It was the duty of the board of county commissioners to refund the money, and the court so held. This is a settled law in Indiana, but before the trial court had passed upon the question the county treasurer had paid the money over to the state and town treasurers. The appellate court held that this did not in the least affect the taxpayer's right of recovery; that the county treasurer had notice of the claim, and should have retained the money. On page 350 the court, passing upon this precise question, said:

> "When the county, notwithstanding the legal proceedings instituted to recover such money, nevertheless, distributed the same to the state and town authorities, it did so at its own risk and peril,

and the appellant can not be required to pursue such funds into the hands of the parties to whom they were wrongfully distributed."

Further along, on page 350, the court holds that the county treasurer was a trustee for the taxpayer; that moneys paid in became county taxes until distributed. The language of the court in that case so fully covers the point and the facts in this case that we quote it:

"The assessment and collection of the taxes, as found by the court, had been made *in solido*, and not in parcels. When it was paid into the county treasury it became county taxes for all purposes until it had been distributed to the various funds. As long as it remained in the county treasury it was held in trust by the county, either for the appellant or for the proper funds to which it respectively belonged. When the board of commissioners received notice of the appellant's claim, the county became a trustee for the appellant, and in the event it was afterward adjudged that his claim was a meritorious one, it became obligatory upon the county to refund the money to appellant, which had been erroneously paid by him. The town of Crown Point collected no taxes from the appellant. It was the county or its representatives, who did this, and the county alone must respond as long as the funds are in its treasury. When this action was instituted, the money was all in the possession of the appellee, and it is impossible for us to conceive how the appellee could be held to profit by its own wrong in subsequently paying out or distributing the money or any part thereof, to the state or

town. The pendency of a suit is always sufficient notice of the matter involved in such suit, at least to the parties to the litigation, and those who claim under them. Arnold v. Smith, 80 Ind. 417. If this be true, there was certainly no necessity for suing out an injunction in order to hold the appellee accountable. It is true that the statute provides that when a portion of the taxes wrongfully assessed and paid shall have been paid for state purposes the commissioners shall give the claimant a certificate to the auditor of state for the repayment of the same by the treasurer of state. But this provision is expressly limited to cases where the money had already been paid into the state treasury at the time the action was commenced. (R. S. 1894, §7916; R. S. 1881, §5814.) The section cited has no application when the money is still in the county treasury at the time of the action to recover the same."

Various provisions of the statutes of Indiana, not necessary to quote, make up the following data, which is of importance in this case. The county board of review meets on the third Monday of June, annually (§8532, R. S. 1894). The state board of tax commissioners meets on the second Monday of July, annually (§8447, R. S. 1894). The levies are fixed and the tax duplicate made up and on January first are turned over by the county auditor to the county treasurer for the collection of taxes (§8556, R. S. 1894). The first instalment immediately thereafter becomes due. It, however, need not be paid, nor does it become delinquent until the

first Monday in May following, and the second instalment is not due until the first Monday of November following (§8570 R. S. 1894.) The taxpayer has all this period in which to pay his taxes, and if any portion is illegal or wrongful and void he has all this time in which to bring suit in the state court to recover it back.

The appellant could have paid its taxes any time between January 1st and May 1st, and filed a claim before the board of county commissioners for refunder of his taxes, and from their action an appeal is given to the circuit court, and then to the state appellate or supreme court, according to the facts. This is not only an adequate remedy, but it is a short, speedy, simple, summary and cheap remedy (Rev. Stat. 1894, §7917).

Shultz v. Board, 20 Ind. 178;
State v. Board, 63 Ind. 497.

IRREPARABLE INJURY.

Third. Does the bill show that the complainant would suffer irreparable injury?

What is the irreparable injury complained of as charged in the bill? The bill charges that "Armin C. Koehne, as treasurer as aforesaid, are, in compliance with the supposed duty devolving upon them under the unconstitutional, invalid and void statutes of the state of Indiana, requiring such taxation, demanding the further large sum, to wit: [The sum of $389.85, as unpaid taxes for the said year 1893" (Rec., p. 5); "$481.40, as unpaid taxes for the

said year 1894" (Rec., p. 6); "$495.04, as unpaid taxes for the year 1895" (Rec., p. 8); "the sum of $3,556.96, as unpaid taxes for the said year 1896" (Rec., p. 9); "the sum of $8,538.67, as unpaid taxes for the said year 1897" (Rec., p. 11); "the sum of $8,954.65, as unpaid taxes for the year 1898" (Rec., p. 13)], basing said demand upon the valuation of letters patent of the United States, owned or held by your orator, as above set forth, *or upon the capital stock of your orator*, which consists entirely of, or solely represents, the letters patent of the United States, as above set forth; and are threatening to levy upon and seize and sell the property of your orator to pay the taxes of your orator, so wrongfully, unlawfully and unjustly demanded; all in violation of the constitution and laws of the United States under and by virtue of which such letters patent were issued, and are held by your orator, and in defiance of your orator's right in the premises, and to the great and manifest wrong and injury of your orator." * * * "That it is a part of the duty of the said defendant, Armin C. Koehne, as aforesaid, to pay over into the treasury of the state of Indiana a large proportion of the amount so received and collected by him as taxes, and, therefore, that if said amounts are so collected and received and paid over, they will become mixed with other moneys of the state and thus be beyond the reach of this or any court, and irrecoverable, and that great and irreparable injury will result to your orator, if such unlawful collection and paying over as aforesaid be not prevented." (Rec., pp. 14, 15.) "That said defendants, in their official ca-

pacity, are threatening and intend to and will in supposed compliance with the requirements of the provisions of the aforesaid unconstitutional, invalid and void statutes of the state of Indiana, requiring such taxation, levy upon the property of your orator and will proceed to sell and distrain the same to pay and satisfy said sums so claimed to be due and delinquent, if not enjoined from so doing; and that said defendants are threatening to collect such wrongful, unjust, illegal and void taxation by distraint and sale of the property of your orator, to the great and irreparable injury of your orator." (Rec., p. 15.) "That, notwithstanding the payments aforesaid of all the taxes justly and equitably due * * * Armin C. Koehne, as treasurer of Marion county, Indiana, as aforesaid, is claiming and asserting the right to enforce the payment of the entire taxes as extended upon the duplicates, * * * and will unless restrained and enjoined by a decree of this court, attempt to enforce payment of such wrongful, unjust and unlawful taxes, by distraint and sale of the property of your orator, to its great and irreparable wrong and injury." (Rec., p. 15.)

These are the charges in the bill, upon which complainant bases its right for redress in a court of equity.

Summarized, the bill charges the unconstitutionality of the statute, the illegality of the taxes, that defendants are demanding payment of more than $20,000, are threatening to levy upon, seize and sell complainant's property, that if collected and paid over to the state it can not recover, that they are threatening to and will if not enjoined levy

upon and proceed to sell and distrain its property to pay the taxes demanded.

Clearly, this does not show that complainant will be irreparably injured. There is no charge that the acts are being done by irresponsible persons. No allegation of inability on the part of the company to pay the amount of taxes demanded. The trespass involved in the threatened levy and sale is not shown to be "continuous, destructive, inflictive of injury, or incapable of being measured in money." No claim is made that if the taxes are paid to the county treasurer suit can not be maintained against the county and recovery be had for the entire amount.

We have already shown that even though the complainant had waited until the funds were distributed, and the state's portion had been paid into the state treasury, suit might be brought against the state to recover the money (§§1419 to 1425, R. S. 1894 and 1901). But it was unnecessary for complainant to wait until the taxes had been distributed before bringing his action to recover, if wrongfully assessed. The taxes are fixed by the board of review in June, annually (§8532, R. S. 1894 and 1901). The state board of tax commissioners meets in July, annually (§8547, R. S. 1894 and 1901). The taxes become due in January, and may be paid at any time before the first Monday in May following (§8570, R. S. 1894 and 1901). If the property was wrongfully assessed, upon payment to the county treasurer, complainant could have immediately filed its claim with the board of county commissioners, to have the same refunded (§7915, R. S. 1894

and 1901). From the decision of the board an appeal would lie to the circuit court (§7917, R. S. 1894 and 1901). "When it was paid into the county treasury it became county taxes for all purposes, until distributed to the various funds" (DuBois v. Board, 10 Ind. App. 347, 350). So that the injury complained of, that if paid to the state it would be irrecoverable, is not real but fanciful, not probable, nor even possible.

In Dows v. Chicago, 11 Wall. 108, 112, which has been frequently cited with approval, it was said by Mr. Justice Fields, speaking for the court:

> "The party of whom an illegal tax is collected has ordinarily ample remedy, either by action against the officer making the collection or the body to whom the tax is paid. Here such remedy existed. If the tax was illegal, the plaintiff protesting against its enforcement might have had his action, after it was paid, against the officer or the city to recover back the money, or he might have prosecuted either for his damages. No irreparable injury would have followed to him from its collection. Nor would he have been compelled to resort to a multiplicity of suits to determine his rights."

In Shelton v. Platt, 139 U. S. 591, the averments as to irreparable injury were "That the property of the said United States Express Company in Tennessee, is employed in interstate commerce in the said express business, and necessary to the conduct of it; that if seized by the said sheriff it will greatly embarrass the company in the conduct of such business and subject it to heavy loss and

damage, and the public served by it to great loss and inconvenience." Mr. Chief Justice Fuller, speaking for this court, on page 596, said:

> "The trespass involved in the levy of the distress warrants was not shown to be continuous, destructive, inflictive of injury incapable of being measured in money, or committed by irresponsible persons. So far as appeared, complete compensation for the resulting injury could have been had by recovery of damages in an action at law. There is no allegation of inability on the part of the express company to pay the amount of the taxes claimed, nor any averments showing that the seizure and sale of the particular property which might be levied on, would subject it to loss, damage and inconvenience which would be in their nature irremedial. The bill showed the company to be doing a vast business, and it was an unreasonable inference that it must submit to the sale of its wagons and horses, or that such sale would work that kind of mischief which justifies the interference of equity in the application of a preventive remedy. Nor did the mere fact that its property might be used in the conduct of interstate commerce give jurisdiction."

In State Railroad Tax Cases, 92 U. S. 575, at page 614, this court said:

> "Mere errors or excess in valuation, or hardship or injustice of the law, or any grievance which can be remedied by a suit at law, either before or after payment of the taxes, will not justify a court of

> equity to interpose by injunction to stay the collection of a tax."

In Pittsburg, etc., Railway v. Board of Public Works, 172 U. S. 32, the authorities are reviewed and the same principles enunciated.

In Arkansas, etc., Association v. Madden, 175 U. S. 269, at page 274, Mr. Chief Justice Fuller, speaking for the court, said:

> "Inasmuch as the bill contains nothing to indicate inability on the one hand to pay the franchise tax in question, or on the other, to respond in judgment if it were found to have been illegally exacted, and sets up no special circumstances justifying the exercise of equity jurisdiction, other than the consequences which complainant can easily avert, without loss or injury, we are of opinion that it can not be sustained. It is quite possible that in cases of this sort the validity of a law may be more conveniently tested, by the party denying it, by a bill in equity, than by an action at law; but considerations of that character, while they may explain, do not justify, resort to that mode of proceeding."

In Brewer v. City of Springfield, 97 Mass. 152, 154, the court, by Bigelow, say:

> "Until the plaintiffs have been compelled to pay the tax which they allege to have been illegally assessed upon them, they have suffered no wrong; when they have paid it, they can collect it back by

an action at law, which would furnish them an adequate and complete remedy."

In Hunnewell v. City of Charlestown, 106 Mass. 350, 352, it is said:

> "It is no foundation for a resort to equity, that the plaintiff is put to the inconvenience of raising the money to pay the assessment, in order to have his legal remedy by recovering it back;"

In Van Coot v. Board, 18 Wis. 247, 249, that court said:

> "With this right of action against the corporation or body politic to which the money is paid, or for which it is collected, to recover it back, there would seem to be no more propriety in the interference of equity to stay the proceeding than in the most common case of trespass or wrong. There can be no pretense of irreparable injury. At most it is but a proceeding to take such sum of money, or such a definitely ascertainable value of property, for which, in the judgment of both law and of equity, the return of a like sum will be full compensation."

Judge Cooley, in his work on taxation, on page 538, entirely supports the above views in these words:

> "When a tax, as assessed, is only a personal charge against the party taxed, or against his personal property, it is difficult in most cases to suggest any ground of equitable jurisdiction. Pre-

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sumptively the remedy at law is adequate. If the tax is illegal and the party makes payment, he is entitled to recover back the amount. The case does not differ in this regard from any other case in which a party is compelled to pay an illegal demand; the illegality alone affords no ground for equitable interference, and the proceedings to enforce the tax by distress and sale can give none, as these only constitute an ordinary trespass. To this point the decisions are numerous. The exceptions to this rule, if any, must be of cases which are to be classed under the head of 'irreparable injury.'"

Fourth. The authorities cited by appellant in no wise conflict with the above authorities, as an examination of the cases will show:

Crescent City, etc., Company v. Butchers' Union, etc., Company, 12 Fed. 225, was a suit to enjoin the abrogation of complainant's contract or charter rights.

In Starin v. New York, 115 U. S. 248, the court held that no federal question was involved.

In Osborn v. Bank of United States, 9 Wheat. 737, the court held that the effect of the law of Ohio, in question, would be the expulsion of the bank from the state, and that the injury done thereby would be in its nature irreparable.

In Watson v. Sutherland, 5 Wall. 74, jurisdiction was sustained on the ground of irreparable injury.

In Boice v. Grundy, 3 Pet. 210, the basis of jurisdiction was fraud.

In Payne v. Hook, 7 Wall. 745, jurisdiction was based on diverse citizenship.

As was said in Payne v. Hook, on page 430:

> "The equity jurisdiction conferred on the Federal courts is the same that the High Court of Chancery in England possesses,"

and we have been unable to find a case in which the high court of chancery in England ever interfered to restrain the collection of taxes, customs or duties. See Moores v. Smedley, 6 Johns. Ch. (N. Y.) 28; Wells, Fargo & Co. v. Dayton, 11 Nev. 161, 167.

The government of the United States has provided a complete system of corrective justice in regard to all taxes imposed by the general government, which, in both the customs and internal revenue departments, is founded upon the idea of appeals within the executive departments.

If the party is aggrieved and does not obtain satisfaction on appeal, a suit may be brought against the collecting officer after payment is made. But until payment, he has no standing in any court. To emphasize this principle, and that there may be no misunderstanding of it, congress enacted that "No suit for the purpose of restraining the assessment of any tax shall be maintained in any court." (U. S. Rev. Stat. §3224.)

While this section of the statute seems broad enough to include taxes levied by the states, yet it is held to apply only to taxes levied by the United States, and not to state taxation; yet it does show that it is the policy of the gov-

ernment not to interfere with the collection of taxes, except in extreme cases, where it is clearly shown that the party is entitled to equitable relief.

In what cases relief will be granted is stated in the cases cited above.

In the tax cases where jurisdiction has been exercised in this class of cases, it will be found that they fall within some of the classes stated in the Dows case, supra, or else the question of jurisdiction was waived.

In Cumming v. National Bank, 101 U. S. 153, the jurisdiction was maintained on the ground of preventing multiplicity of suits.

In Allen v. Baltimore, etc., Railway Company, 114 U. S. 311, it was admitted that if the property was levied on and sold, great sacrifice and loss would result. This admission made a case of irreparable injury.

In Dodge v. Woolsey, 18 How. 331, it was to prevent the violation of the charter and a breach of trust.

In Union Pacific Railway Company v. Cheyenne, 113 U. S. 516, jurisdiction was maintained to prevent a multiplicity of suits.

So it is uniformly held, following the Dows case, that before jurisdiction will be maintained, the complainant must bring himself within the recognized jurisdiction of a court of equity, as recognized in this class of cases. The mere fact that a federal question may be involved, that the statute is unconstitutional, that the tax is illegal or that the property is wrongfully assessed, will not be sufficient to give jurisdiction in equity.

SUMMARY.

To sum up the above propositions:

(1) The appellant had a complete and adequate remedy at law, by appeal to the state board of tax commissioners from the assessment made by the county board of review.

(2) It failed and refused to pursue this remedy, which was open to it, and which it was its duty to pursue, and, having failed to do it, lost its right, in the state or federal courts, to assail the assessment made by the county board.

(3) The presumption is that the state board of tax commissioners would have remedied any evil and corrected any erroneous assessment, if such there was, had appellant appeared before the board and pointed out such evils.

(4) If the state board refused to make such correction the taxpayer could wait until after the first day of January following, then he could have paid the taxes to the county treasurer and immediately filed one claim with the board of county commissioners for the refunding of all of the illegal taxes assessed, for all purposes.

(5) This remedy was not only adequate and perfect, but was much more speedy and simple than to proceed as appellant has done in this case.

(6) The alleged illegal taxes could in no event cast a cloud upon the title to appellant's real estate, because no real estate is shown to have been owned by appellant, and no taxes thereon are involved in this controversy.

(7) No multiplicity of suits were necessary; on the contrary, one simple petition filed with the board of county commissioners would have covered the entire taxes charged to have been illegally assessed and collected, and if refused, appellant could have filed its complaint in the circuit or superior court of Marion county.

(8) No irreparable injury could possibly have resulted to appellant, if it had pursued the remedy that the statute distinctly points out. The assessment by the county board or the state board would have been made months before any taxes would be due from appellant, and, further, after such taxes were due, it had four months in which to pay the same, and prepare its petition for refunder for each of the years complained of.

(9) Appellant, having failed either to appeal or to pay its taxes and file a petition for refunder, as the statute of Indiana provides, the appeal was bad and the circuit court rightfully sustained the demurrer and dismissed the appeal.

THE BILL DOES NOT SHOW THAT THE VALUE OF THE LETTERS PATENT WAS INCLUDED IN THE ASSESSMENTS.

The allegations of the bill are, "That the state of Indiana has enacted and is attempting to enforce certain statutes, requiring the taxation of patent rights, or letters patent of the United States; the provisions of said statutes in question being comprised in the act of the general assembly of the state of Indiana, approved March 6, 1891, which, by section 5C, requires that * * * "Seventh.

All patent rights, describing them and giving the number of each patent and the value of each; and which, in section 53, has prescribed and enacted a form of schedule which all property owners are required to follow in returning their property for taxation, in and by which schedule the 'Number of patent rights and value' are required to be returned for taxation in common with other personal property." (Rec., p. 3.)

From this provision of the statute, requiring the number and value of patent rights to be given, complainant concludes that the board of review fixed the assessment for each year at the amount specified in the bill, because of the ownership of the letters patent and because of the value of the stock which it is alleged consisted in and was derived solely from such ownership of the letters patent.

The law, however, under which complainant was assessed, provides specifically what shall be assessed and what shall not, as well as the manner in which it shall be assessed.

We have already quoted many of the sections of the statute, showing the mode of assessment and the procedure, but we desire to again refer to a few of the sections, briefly, at this point.

The tax law of 1891 (Acts 1891, chapter 99, pp. 199 to 291), provides in itself a complete and comprehensive system of taxation. The law must be construed as a whole and not be construed from some one sentence in a section of the law.

Section 4 of the act of 1891, and the section as amended

in 1895 (Acts 1895, p. 21), provides that "Property exempt from taxation by the laws of the United States shall not be included" for the purpose of taxation (§8411, R. S. 1894 and 1901).

By section 25 of the tax law (being §8435, R. S. 1894 and 1901) "Every franchise granted by any law of this state, owned or used by any person or corporation, and every franchise or privilege used or enjoyed by any person or corporation, shall be listed and assessed as personal property."

Section 30 of the tax law (being §8440, R. S. 1894 and 1901) provides for a statement from manufacturers.

Section 48 of the tax law of 1891 (being §8458, R. S. 1894 and 1901) provides for the furnishing of blanks to each person liable to be assessed. On these blanks a correct description of all personal property with the "true cash value of each item of property for the guidance of such assessor" shall be made.

Sections 48, 49 and 53 of the tax law (being §§8459, 8460 and 8463, R. S. 1894 and 1901) provide certain statements and schedules for all persons, including corporations; and section 73 of the tax law (being §8491, R. S. 1894 and 1901), for statements of domestic corporations.

These statements and schedules made by domestic corporations are returned to the county auditor, and by the auditor they are laid before the board of review at their annual meeting, "and said board shall value and assess the capital stock and all franchises and privileges of such

companies or associations in the manner provided by this act" (§74, Acts 1891; §8492, R. S. 1894 and 1901).

This act has been construed by the supreme court of Indiana in Pittsburg, etc., Railway Company v. Backus, 133 Ind. 625, and the purpose and effect of the statements and schedule is explained. On page 654 the court says:

> "These schedules are required to be filed for the purpose of giving a description of the property and as a source of information as to value, but, as expressly provided by the act, such values are not conclusive. The board may act on other information and the personal knowledge of values, and the act expressly provides that the assessment shall be made of this class of property at its true cash value, the same as all other property."

The statute states specifically how taxes shall be assessed on domestic corporations, and, while the act requires that the number and value of each patent right shall be given, this information is only for the purpose of informing the board of the various property held by the corporation, evidence, as it were, upon which the board ascertains the value of the taxable property.

What is it that goes to make up the value of the capital stock of this corporation? Not the letters patent alone, nor the tangible property, nor the money invested, but a combination of all these and other things. It is the plant, the franchise, the business capacity of the officers, the energy with which the business is conducted; the care, prudence and foresight of its managers, and the money

spent in conducting and advertising its business. The letters patent were of themselves of little value at the time of their issue. The efficiency of the patented articles, their capacity to perform the work contemplated, had to be proven and demonstrated; a demand and a market had to be created for them. A great deal of time and large sums of money had to be expended in placing these articles upon the market, and establishing their usefulness.

To illustrate this proposition: In the case of Holt v. Indiana Manufacturing Company, supra, being No. 30, October term, 1899, before this court, involving the same taxes of this company as are here involved for the years '92, '93, '94 and '95, evidence was taken and printed in the record. On page 30 of that record the secretary of appellant corporation testifies that its company expends between forty and fifty thousand dollars per annum for advertising expenses, for purchasing and delivering catalogues, traveling expenses in affecting royalty contracts, and introducing the stacker to the notice of the manufacturers and thrasher men; that its business extends to all the wheat growing sections of the United States.

The record in that cause further shows on page 2 of the stipulated statement of omitted testimony attached to the original record, and on page 11 of the record that the value of the letters patent was not taken into account in making the assessments for the years '92, '93, '94 and '95, but that the assessment placed upon the property of appellant corporation was the estimated value of the capital stock of such corporation exclusive of the letters patent.

We make these citations from the former record for the purpose of emphasizing our proposition at this point, that the bill in this case does not show that the value of the letters patent was included in making up the assessment against the appellant corporation.

These citations illustrate the point that patent rights alone are of little or no value; that they must be exploited and that corporations are organized for the purpose of manufacturing articles, the whole or parts of which are patented articles. The patent right itself is a very small part of the present value of the capital stock in many corporations, although the total amount of such capital stock originally may have been exchanged for letters patent. The Bell Telephone Company is a conspicuous example of the value of the capital stock of a corporation that has been created by the exploitation of patents. It can not be tolerated that because a part or the whole of the original capital stock of a corporation was exchanged for letters patent, therefore such capital stock for all the years of the life of the patents is to escape taxation. What is to happen when the original patents have expired? Is not the stock then to be taxed, or is the capital stock of such corporation never to be taxed because it was originally exchanged for letters patent. Or, suppose again, that a part of the capital stock was exchanged for letters patent and the balance was paid for in cash, must this stock that was originally traded for patents be branded on its face as non-taxable, and the balance of the capital stock be branded as taxable when issued?

There is scarcely a corporation of any great magnitude in the United States which has not at some time exchanged some of its capital stock for letters patent. For all that appears in the bill in this case this company has expended more money in advertising, manufacturing, distributing and exploiting the products of this company than the total assessment fixed on the capital stock thereof by the state board of tax commissioners.

By what sort of schedule is this court to determine what portion of the assessment so fixed is attributable to the original value of the patents, and what portion is attributable to the energy, intelligence and money used and expended in exploiting the article so patented?

In considering this subject the supreme court of Indiana, in the case of Hyland v. Central Iron & Steel Company, 129 Ind. 68, on page 70, the court say:

> "It can not be assumed that the tangible property necessarily represents the value of the capital stock, for the business of a corporation owning comparatively little tangible property, may be so profitable as to impress upon its stock a value much beyond its tangible property; or it may be the owner of a franchise which gives the stock a value much greater than that of the tangible property of which it is the owner. A corporation which, in its sworn return, values its capital stock at almost five times as much as its tangible property, can not successfully assert that the taxation of its tangible property entirely absolves its capital stock from liability. It is, at all events, entirely clear that where it affirmatively appears, as it does from the evidence

> in this case, that the tangible property is not equal to the value of the stock, the stock is taxable to the extent that it exceeds in value the tangible property."

As an answer to the proposition that only the tangible property must be assessed, the court, on p. 71, proceeds:

> "The only evidence as to the value of the capital stock, as well as the only evidence of the value of the tangible property, was that contained in the tax list, or schedule, and that certainly does not prove, or tend to prove, that there was double taxation since the actual value of the capital stock is shown to exceed that of the tangible property more than one hundred thousand dollars."

In Pittsburg, etc., Ry. Co. v. Backus, 154 U. S. 439, on page 445, Mr. Justice Brewer says:

> "The rule of property taxation is that the value of the property is the basis of taxation. It does not mean a tax upon the earnings which the property makes, nor the privilege of using the property, but rests solely upon the value. But the value of property results from the use to which it is put and varies with the profitableness of that use, present and prospective, actual and anticipated. There is no pecuniary value outside of that which results from such use. The amount and profitable character of such use determines the value, and if property is taxed at its actual cash value it is taxed upon something which is created by the uses to which it is put. In the nature of things it is practically impossible—

at least in respect to railroad property—to divide its value, and determine how much is caused by one use to which it is put, and how much by another."

In the State Railroad Tax Cases, 92 U. S. 515, on page 602, Mr. Justice Miller says:

"It is obvious, however, that while a fair assessment under these two descriptions of property will include all the visible or tangible property of the corporation, it may or may not include all its wealth. There may be other property of a class not visible or tangible which ought to respond to taxation, and which the state has a right to subject to taxation. Thus it may occur, as in fact is claimed by one of these companies, that, being insolvent and its earnings not being sufficient to pay anything beyond its necessary expenses for operating the road and its repairs, this tangible property represents more than the real wealth of the company and its property. While, on the other hand, another one of these companies is so rich that, after paying its expenses and interest on a large amount of debt, it declares large dividends; and this interest and these dividends, when looked to in reference to what is called the tangible property, show that there is here another element of wealth which ought to pay its share of the taxes.

"This element, the state of Illinois calls the value of the franchise and capital stock of the corporation,—the value of the right to use this tangible property in a special manner for the purposes of gain. This constitutes the third valuation, which is likewise to be made by the board of equalization."

In Adams Express Co. v. Ohio, 165 U. S. 194, on p. 224, this court approves the following language of the supreme court of Ohio. Mr. Chief Justice Fuller says:

> "If, by reason of the good will of the concern, or the skill, experience and energy with which this business is conducted, the market value of the capital stock is largely increased, whereby the value of the tangible property of the corporation, considered as an entire plant, acquires a greater market value than it otherwise would have had, it can not properly be said not to be its true value in money, within the meaning of the Constitution, because good will and other elements indirectly entered into its value. The market value of property is what it will bring when sold as such property is ordinarily sold in the community where it is situated; and the fact that it is its market value can not be questioned because attributed somewhat to good will, franchise and skillful management of the property, or any other legitimate agency."

When the Express Company Cases came up for rehearing, 166 U. S. 185, on p. 219, Mr. Justice Brewer, speaking for the court, said:

> "It matters not in what this intangible property consists—whether privileges, corporate franchise, contracts or obligations. It is enough that it is property which, though intangible, exists, which has value, produces income and passes current in the market of the world. To ignore this intangible property, or to hold that it is not subject to tax-

> ation at its accepted value is to eliminate from the reach of the taxing power a large portion of the wealth of the country. Now, whenever separate articles of tangible property, are joined together, not simply by unity or ownership, but in a unity of use, there is not infrequently developed a property intangible though it may be, which in value exceeds the aggregate of the value of the separate pieces of tangible property. Upon what theory of substantial right can it be adjudged that the value of this intangible property must be excluded from the tax lists, and the only property placed thereon be the separate pieces of tangible property? The first question to be considered, therefore, is whether there is belonging to these express companies intangible property—property differing from the tangible property—a property created by either the combined use or the manner of use of the separate articles of tangible property, or the grant or acquisition of franchise, or privileges, or altogether. To say that there can be no such intangible property; that it is something of no value, is to insult the common intelligence of every man."

On page 220 this court asserts the cardinal principle respecting the taxable value of property:

> "Now it is a cardinal rule, which should never be forgotten, that whatever property is worth for the purposes of income and sale, it is also worth for purposes of taxation."

We know of no single sentence in the books that contains a more comprehensive statement of the law of tax-

ation of corporate stocks, franchises and property, than is contained in the above sentence.

Taking all these things into consideration, as the boards making the assessment had the right to do; and taking into consideration the fact that it is not charged in the bill that the valuation placed upon the property was too high, can it be said that the boards did actually add the value of complainant's patents, if such patents are not taxable?

CONSTITUTIONAL QUESTION.

First. Are the letters patent of the United States taxable under state or municipal authority?

Second. Is the stock of a domestic manufacturing company, which is largely or wholly invested in letters patent of the United States, taxable under the Indiana tax law?

While we do not think the court will be called upon to decide either of the foregoing questions, yet we discuss them, as though they were vital questions.

It is contended by appellant, *first*, that under section 8, article 1, of the constitution of the United States that "The congress shall have power * * * to promote the progress of science and useful arts by securing, for limited times, to authors and inventors, exclusive rights to their respective writings and discoveries. * * * And to make all laws which shall be necessary for carrying into execution the foregoing powers." Letters patent issued by the United States, under the acts of congress, constitute a federal franchise that, by reason of the constitution, is not

subject to taxation under or by authority of the states; and, *second*, that stock in domestic corporations, which has been invested in letters patent of the United States, is not taxable by the states.

There is no case that we can find, decided by this court, in which this question has been presented, but it is asserted by appellant that the decisions which have heretofore been made are conclusive on the question presented here, and the attention of this court is especially called by appellant to—

McCulloch v. Maryland, 4 Wheat. 316;
Ableman v. Booth, 21 How. 506;
Osborn v. Bank, 9 Wheat. 738.
California v. Central Pacific Railroad Co., 127 U. S. 1;
Robbins v. Taxing District, 120 U. S. 489;
Patterson v. Kentucky, 97 U. S. 501;
Webber v. Virginia, 103 U. S. 344;
Philadelphia, etc., Co. v. Pennsylvania, 122 U. S. 326;
Leloup v. Mobile, 127 U. S. 640;
Crutcher v. Kentucky, 141 U. S. 47.

We shall not undertake to review each of the cases bearing upon this subject of taxation, but will state a few principles that appear to be well established.

Congress may constitutionally organize or constitute agencies for the carrying into effect of national powers granted by the constitution. To carry into effect the pow-

ers granted, banks may be organized, and such banks are not subject to taxation by the states.

McCulloch v. Maryland, 4 Wheat. 316;
Osborn v. Bank, 9 Wheat. 738.

In the regulation of commerce between the states, and in providing for postal accommodations and military exigencies, congress may grant franchises to railway corporations, and those franchises are not *eo nomine* taxable by the states.

California v. Pacific Railroad Co., 127 U. S. 1.

Congress has power "to borrow money on the credit of the United States," and to issue stock and bonds to evidence the debt created, and such stock or bonds are not taxable by the states.

Weston v. City of Charlestown, 2 Peters 449;
Bank of Commerce v. New York City, 2 Black 620;
Bank Tax Case, 2 Wall. 200;
The Banks v. The Mayor, 7 Wall. 16.

States may tax a franchise of a corporation, although its capital stock is invested in securities of the United States.

Society for Savings v. Coite, 6 Wall. 594;
Provident Institution v. Massachusetts, 6 Wall. 611;
Hamilton Co. v. Massachusetts, 6 Wall. 632;
Home Insurance Co. v. New York, 134 U. S. 594, 606.

States may impose a tax upon the privilege of taking, under the statute of wills or of descents, although part of the property of the decedent was composed of United States bonds.

Plummer v. Coler, 178 U. S. 115, 135;
Murdock v. Ward, 178 U. S. 139;
Sherman v. United States, 178 U. S. 150;
Orr v. Gilman, 183 U. S. 278, 289.

States may, under the act of congress, tax the shares of stock of a national bank to the shareholders, although the stock is wholly invested in government bonds.

Van Allen v. Assessors, 3 Wall. 573, 582;
People v. Commissioners, 4 Wall. 244, 255;
Lionberger v. Rouse, 9 Wall. 468, 473;
Palmer v. McMahon, 133 U. S. 660, 665.

A state can not exact a tax or license from a citizen of another state for the privilege or license of carrying on interstate or foreign commerce within its limits, nor impose a tax or duty upon the movements or operations between states that amounts to a regulation of commerce.

Moran v. New Orleans, 112 U. S. 69, 74;
Almy v. California, 24 How. 169;
Woodruff v. Parham, 8 Wall. 123, 138;
Crandall v. Nevada, 6 Wall. 35;
State Freight Tax Case, 15 Wall. 232, 281;
Railroad Co. v. Maryland, 21 Wall. 456, 472;
Welton v. Missouri, 91 U. S. 275;

Guy v. Baltimore, 100 U. S. 434;
Pickard v. Pullman's Southern Car Co., 117 U. S. 34, 43;
Robbins v. Shelby Taxing District, 120 U. S. 489, 497;
Leloup v. Mobile, 127 U. S. 640, 648;
Lyng v. Michigan, 135 U. S. 161, 166;
McCall v. California, 136 U. S. 104, 111;
Crutcher v. Kentucky, 141 U. S. 47, 61;
Brennan v. Titusville, 153 U. S. 289, 303.

Ships or vessels engaged in interstate or foreign commerce may be taxed by the state at their legal situs, their home port and the domicil of their owners.

Hays v. Pacific Mail Steamship Co., 17 How. 596, 600;
St. Louis v. Ferry Co., 11 Wall. 423;
Morgan v. Parham, 16 Wall. 471;
Wiggins Ferry Co. v. East St. Louis, 107 U. S. 365, 373;
Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 207.

States may tax personal property employed in interstate or foreign commerce, like other property within its jurisdiction.

Delaware Railroad Tax Case, 18 Wall. 206, 232;
Telegraph Co. v. Texas, 105 U. S. 460, 464;
Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 206;
Western Union Telegraph Co. v. Massachusetts, 125 U. S. 530, 549;

Marye v. Baltimore, etc., R. R. Co., 127 U. S. 117, 123;
Leloup v. Mobile, 127 U. S. 640, 649;
Pullman's Car Co. v. Pennsylvania, 141 U. S. 18;
State Railroad Tax Cases, 92 U. S. 575, 607;
Columbus Southern Ry. v. Wright, 151 U. S. 470;
Cleveland, etc., Ry. Co. v. Backus, 154 U. S. 439, 445;
Western Union Telegraph Co. v. Taggart, 163 U. S. 1, 14;
Adams Express Co. v. Ohio, 165 U. S. 194;
Pittsburg, etc. Ry. Co. v. Backus, 154 U. S. 421;
Postal Telegraph, etc., Co. v. Adams, 155 U. S. 688;
Henderson Bridge Co. v. Kentucky, 166 U. S. 150;
Adams Express Co. v. Ohio, 166 U. S. 185;
American Refrigerator Co. v. Hall, 174 U. S. 70, 75;
New York v. Roberts, 171 U. S. 658, 664;
Union Refrigerator Co. v. Lynch, 177 U. S. 149, 152.

From these cases, therefore, it would appear that—

(a) When congress creates a governmental agency, such agency can not be taxed by the states, as such tax operates directly upon the power of congress and detracts therefrom, which would be a limitation of the general government by the act of a state.

(b) Congress, having the power to borrow money upon the credit of the United States, and to issue stocks and bonds as evidence of such indebtedness, any tax by the states upon stocks and bonds, or directly upon the stock of a corporation invested in such bonds, is a limitation upon the power of congress.

(c) Congress, having the power to *regulate* interstate and foreign commerce, any tax by a state in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, is a burden upon that commerce and amounts to a regulation of it.

(d) Matters over which the states have control, as shares of bank stock owned by citizens, or having its *situs* within the state; or franchises of corporations granted by the state; inheritances and descents, are proper subjects of taxation by the states, although the stock of the corporation, or the estate may be invested in federal securities.

(e) The states have the power to tax the property and instrumentalities used in interstate commerce, having a *situs* within the state, so long as no discrimination is made against such property in favor of like property in the state.

In the creation of governmental agencies, and in borrowing money, the power of congress is absolute, and can not be interfered with. In matters of interstate commerce the power of congress is to *regulate*, and the states retain the power over the property engaged therein, which is within their borders, and control the same so long as such control does not amount to *regulation* of that commerce.

LETTERS PATENT.

Pursuant to the power of congress to "promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right of their respective writings and discoveries," it was enacted that patents should be issued to inventors which should secure to them for a limited term the "exclusive right to make, use and vend the invention or discovery through the United States and the territories thereof." U. S. Rev. Stat. §4884.

What *right*, then, is secured to the inventor by letters patent by the constitutional provision?

This has been answered by this and other courts in various cases. In Patterson v. Kentucky, 97 U. S. 501, on p. 506, Mr. Justice Harlan says:

> "All which they primarily secure is the exclusive right in the discovery. That is, an incorporeal right, or, in the language of Lord Mansfield, in Miller v. Taylor (4 Burr, 2303): 'A property in notion,' having 'no corporeal tangible substance.'"

In Bloomer v. McQuewan, 14 How. 539, on p. 548, this court, by Chief Justice Taney, says:

> "The franchise which the patent grants consists altogether in the right to exclude every one from making, using or vending the thing patented, without permission of the patentee. This is all he obtains by the patent."

In re Brosnahan, 18 Fed. 62, on p. 64, Mr. Justice Miller says:

> "The sole object and purpose of the laws which constitute the patent and copyright system is to give to the author and the inventor a monopoly of what he has written or discovered, that no one else shall make or use or sell his writings or his invention without his permission; and what is granted to him is the exclusive right; not the abstract right, but the right in him to the exclusion of everybody else."

In Jordan v. Overseers, 4 Ohio 295, 309, the supreme court of Ohio said:

> "Although the inventor had at all times the right to enjoy the fruits of his own ingenuity in every lawful form of which its use was susceptible, yet before the enactment of the statute, he had not the power of preventing others from participating in that enjoyment to the same extent with himself; so that, however the world might derive benefit from his labors, no profit ensued to himself. The ingenious man was, therefore, led either to abandon pursuits of this nature, or to conceal his results from the world. The end of the statute was to encourage useful inventions and to hold forth as inducements to the inventor the exclusive use of his inventions for a limited period. The sole operation of the statute is to enable him to prevent others from using the products of his labors, except with his consent, but his own right of using it is not enlarged or affected."

See, also:

State v. Telephone Co., 36 Ohio St. 296, 311.

In Tod v. Wick, 36 Ohio St. 370, 384, the supreme court of Ohio said:

> "It (the act of congress) grants to the patentee and his assigns the exclusive right, for a fixed period, to make, use and vend to others his invention or discovery throughout the United States and territories thereof. U. S. Rev. Stat. §4884. This is the extent of the immunity or privilege which the act confers."

In Livingston v. Van Ingen, 9 John. (N. Y.) 507, 581, Chief Justice Kent said:

> "That power (of congress to grant patents) only secures for a limited time to authors and inventors the exclusive privilege to their writings and discoveries. * * * The national power will be fully satisfied if the property created by patent be for the given time enjoyed and used exclusively, *so far* as under the policy of the several states the property shall be deemed fit for toleration and use. There is no need of giving this power any broader construction in order to attain the end for which it was granted, which was to reward the beneficient efforts of genius, and to encourage the useful arts."

The court of appeals of Kentucky, in Patterson v. Commonwealth, 74 Kentucky 311, said:

> "The only benefit to be derived from the patent is that it excludes others from selling the same kind

> of oil for a limited period, unless authorized to do so by the patentee, with the additional right on the part of the latter to sell and transfer his patent right, in the mode prescribed by the patent laws."

From these expressions of the courts it appears that the only right conferred is the mere right to exclude others from interference, and give the inventor a monopoly on the invention, for a limited period, as a reward for his ingenuity. The matter, therefore, with which the states can not interfere is this exclusive right. The right granted is personal property. It passes, in case of bankruptcy, to the assignee. (U. S. Rev. Stat, §5046.) In case of the death of the owner of the patent, the property goes to the executor or administrator. (Shaw, etc., Co. v. City of New Bedford, 19 Fed. 753.) It may be subjected by bill in equity to the payment of a judgment debt of the patentee. (Ager v. Murray, 105 U. S. 126, 128; Carver v. Peck, 131 Mass. 291.)

What is it then about this species of property that, though belonging to a citizen of the state, and having its *situs* within the state, may be used by compulsory methods to pay its owner's debts, yet can not be taxed by the government that gives its owner protection?

It is unlike a franchise granted to a railroad to carry out the powers of congress, to provide for military exigencies, postal accommodations, or the regulation of commerce between the states. It is unlike stocks and bonds, given in evidence of money borrowed on the credit of the government, and no like reason exists as for their exemption from taxation.

In Campbell v. Haverhill, 155 U. S. 610, 618, this court, in speaking of letters patent, by Mr. Justice Brown, said:

> "We have repeatedly held that rights created by congress are subject to the police power, as well as the taxing and the licensing laws of the several states."

This would appear to indicate that appellant's contention is not well founded. True, it has been held in other cases in state courts that patents are not taxable. These cases are based upon the language of Chief Justice Marshall, in McCulloch v. Maryland, 4 Wheat. 316, speaking of the taxation of governmental agencies; but a patent is not a governmental agency, but an "incorporeal and intangible right."

In People v. Russell, 49 Mich. 617, cited by appellant, it was held that the patentee was subject to the licensing laws of the state. Judge Cooley, speaking for the court, said:

> "The ordinance in question does not assume to interfere with, or in any way to abridge the exclusive rights which the patentee may lay claim to under his patent."

The case of Cranson v. Smith, 37 Mich. 309, cited by appellant, was a suit on a note given for a patent right, and it was held that the purpose of the act was "to impose conditions on the transfer of patent rights, which do not apply to any other kinds of property, thereby interfering with the value and enjoyment of such right."

In Herdic v. Roesler, 109 N. Y. 127, the court of appeals had under consideration a statute similar to the one in Cranson v. Smith, *supra*, and at page 133 the court says:

> "The right of a discoverer to sell his invention is not derived from his patent. This right would exist although no patent laws had been enacted. What he obtains by his patent is the right to exclude others from selling or using his invention for the period specified, the right to sell or use, which would, except for the protection of the patent laws, be open to all the world. The statute of New York, now in question, in no way interferes with this exclusive right."

See, also,

Reeves v. Corning, 51 Fed. 774, 784.

This property, therefore, in letters patent is subject to such control by the states as does not interfere with the *exclusive* right granted, or discriminate against it, and may be taxed to the owner the same as other property is taxed.

The question in this case, however, is not whether letters patent are taxable, *eo nomine*, as it is not seriously argued that the patents were assessed. The question is, whether, under the tax law of Indiana, stock in domestic manufacturing companies, which has been invested in letters patent, is taxable.

IS THE STOCK OF A DOMESTIC MANUFACTURING COMPANY, WHICH IS LARGELY OR WHOLLY INVESTED IN LETTERS PATENT OF THE UNITED STATES, TAXABLE UNDER THE INDIANA TAX LAW?

This question is becoming one of great importance to the states on account of the enormous amounts claimed to be invested in such property. In the four Pennsylvania cases alone nearly $7,000,000 of stock was claimed as exempt, while the cases that have been before the courts of New York and New Jersey have added much larger amounts.

In this case, while there is nothing in the bill to show that the value of the patents was more than $25,000, yet it is claimed that the entire value of the stock, which was found to be $500,000 in 1898, is entirely exempt for the reason that the entire capital stock had been exchanged for patents. What is it, then, that makes up this difference ($475,000) between the value of the capital stock and the value of the patents? What is it that makes up the value of the capital stock? Not the mere tangible property. It is the combination of the money invested to successfully operate the business, the combination of skill, energy and experience, with which the business is conducted. These, and many other things peculiar to each concern, make up the value of the stock. These are the things that add great value to the patents.

Assuming, for the purpose of argument, that the patents are not taxable, *eo nomine*, yet that would not preclude the state from taxing the stock of a purely domestic manufacturing company. This is one of the conditions upon which it came into existence.

To illustrate: A, B and C are desirous of combining their energies and capital in the manufacture of stackers. Not desiring to be personally responsible for all the liabilities of such an undertaking, they ask the state to incorporate. The state says: "Yes, you may incorporate, under the manufacturing and mining companies' act, upon certain conditions. You must comply with section one of that act. (§5051, R. S. 1894 and 1901.) You must pay in the amount of stock fixed by your articles within eighteen months. (§5060, R. S. 1894 and 1901.) You must make reports annually, as provided by that act (§5071, R. S. 1894 and 1901.) You must comply with all the requirements of that act. In addition to this, you must deliver to the assessor each year the statements and schedule required by the tax law governing domestic corporations, and pay a tax, to be assessed as provided by the tax law. Are these terms satisfactory? Are the franchises, privileges and immunities I offer you of sufficient value to you that you will comply with my terms?"

A, B and C consider the terms and accept the proffered privileges and immunities. Will they be heard to say that they will not pay for the privileges and immunities thus granted? Certainly not. Having accepted the benefits, they must pay the consideration. These are the conditions under which the complainant came into existence, and they are refusing to pay for the privileges thus granted and are now asking this court to relieve them from so doing.

The payment of these taxes is correlative of the right to exist by and under protection furnished to this domestic corporation by the state. The manner and method of their

taxation is one exclusively within the authority of the power that created it, and gave it authority to exist except, and except only, in so far as those provisions are in hostility to the federal constitution.

It is true that the courts of Pennsylvania and New York have decided that capital stock invested in patent rights is not taxable by the state. But courts of equal dignity have decided to the contrary.

In People v. Campbell, 138 N. Y. 543, the court of appeals, in a learned opinion rendered by Earle, Judge, held that the value of patents held by a manufacturing company is to be included in the taxation of its capital stock. In that case, as in this, the company was a domestic corporation, with a capital of $1,500,000. It was assessed by the comptroller at $3,000,000. There, as here, the company did not complain that the value placed upon its capital stock was too high. It did contend that it ought not to be assessed upon securities that were purchased with patent rights. In that case the entire capital stock of the company was originally invested in patent rights. Corporations were formed in various cities to use these rights, in consideration for which the company received stocks in such corporations.

After the court had disposed of several questions, it took up the direct question here presented, namely: Shall the patents that have been sold by the company be assessed for taxation? On page 547, the court answers that question affirmatively and decisively:

> "A patent is an incorporeal right—a franchise, conferred by the sovereign power upon the pat-

> entee. It is personal to him, and until he is divested of the title thereto, like other personal rights, it attends his person and exists where he is, or where he puts it to use. We are, therefore, of opinion that the comptroller did not err in including in the capital of the relator to be estimated for taxation its patents, so far as they had not been disposed of."

See also,

> People v. Wemple, 61 Hun (N. Y.) 53, 58, 65.

The most elaborately argued case in the books, where this precise question is presented, is the case of Crown Cork and Seal Co. v. Maryland, 87 Md. 687. The court here discusses all the cases then reported, bearing upon the question. The stock of the company was assessed at its full value, no deductions being made for the value of patents, and the court, on page 695, say that the leading question in that case was whether, in the assessment of capital stock of the appellant company for the purposes of taxation, the appellant is entitled to have the assessment limited to the value of property other than the patents granted by the United States. That is the precise question which we present here. There, the taxes were levied without regard to the value of the United States patents. The tax commissioner assessed the value of the shares of stock, and certified the return. On page 697 the court meets the proposition here presented in these words:

> "It is insisted that they (the taxing officers) have erroneously valued and assessed the Patent Rights

> in question, and this is the chief grievance of the appellant. But why should not the shares of stock in the appellant corporation be valued and assessed and taxes paid thereon? The number of corporations incorporated under the laws of this state, engaged in business here, employing vast sums of money and possessed of extensive property rights, is almost unlimited, and yet most of them, in the proper and successful management of their business, have been compelled to purchase and use patent rights to enable them to compete successfully with other corporations engaged in similar business. They are, without exception, compelled to pay taxes on their shares of stock, levied and assessed in like manner with those in controversy here. It is a total misconception of the object sought to be maintained on this appeal, to assert that this is an effort to tax patent rights."

The court, then continuing its vigorous discussion of this question and of the right to tax patents *eo nomine*, say:

> "It is not, however, necessary to the determination of the rights involved in this controversy to decide any such question. It is a proposition about which there is no lingering doubt, that patent rights are personal property, and entitled to the same protection as any other property (Cammeyer v. Newton, 94 U. S. 225); and it will remain for future consideration whether a patent right may not of itself be a proper subject of taxation; but that, as just stated, is not a question necessary to be decided on this appeal."

Further along, on page 698, recurring to the original proposition, of the right to tax the shares of stock, notwithstanding some of the value thereof may be made up of patent rights or franchises, this language appears:

> "To say that the shares of stock of a corporation incorporated under the laws of this state can not be taxed because the corporation enjoys certain *franchises*, the very use of which enables it to successfully carry on its business, would be to strike down our entire system of taxation relating to corporations. And even if it be true that a patent right exists through the medium of a contract with the federal government, its only effect upon the value of the shares of stock of a corporation, which are unquestionably taxable, is to aid in the development of the business interests of such corporation, and largely multiply the chances of its successful management. So that it is not a question as to how the value of the shares of stock of such corporation have been enhanced, whether by the aid of patent rights or by the sale of the manufactured product obtained by the use of such patent rights, or by the superior business qualifications of the agents of the corporation, who manage and control its affairs. It matters not how numerous nor how valuable its patent rights might have been at the inception of the appellant's business enterprise, the shares of its stock would now be comparatively valueless had not other agencies, forceful and active, put life and energy into the undertaking."

What is the scope of the patents granted? What is their operation? What does the government grant or give? These questions are answered on page 699:

> "The supreme court of Ohio, speaking with respect to the meaning of the patent laws of the United States, and quoted with approval in Patterson v. Kentucky, 97 U. S. 506, says: 'The sole operation of the statute is to enable him to prevent others from using the products of his labors, except with his consent.' In the granting of patents the federal government has never sought to do more, and, in fact, has never exercised greater authority than to extend protection to the privilege, such as that granted by a patent for an invention, against the infringement of those who seek to invade it. * * * After careful examination we have failed to discover any satisfactory authority showing that the government has ever yet indicated any intention of limiting the power of the states in dealing with a subject of this kind, although involving patent rights. It is a proposition without support, to seek to maintain that patent rights are agencies or instrumentalities of the General Government, with which the states have no right in any manner to interfere."

On page 700 the court discusses the Pennsylvania case in this language:

> "The result of our investigation is that we have found but two cases directly bearing upon the subject of the taxation of patent rights, as such, which is not the specific question to be determined on this

> appeal. The case which supports the theory of exemption of patent rights from taxation is the case of Commonwealth v. Westinghouse Electric, etc., Co., 151 Pa. St. 265. The supreme court of Pennsylvania, having filed no opinion, adopted that of the lower court, from which we briefly quote, and which sufficiently marks the distinction between the Pennsylvania case and the one now under consideration. The former case maintains that 'The tax being upon the capital stock, it is a tax upon the company's property and assets.' This is not the law of Maryland, and such view is not the accepted doctrine held by the United States supreme court. (Bank of Commerce v. Tennessee, 161 U. S. 146.)"

The court then takes up the case of People v. Campbell, supra, decided by the New York court of appeals, as follows:

> "We have referred to the one case, that of 151 Pennsylvania State, *supra*, which maintains the non-liability to taxation of patent rights: the case of People v. Campbell, 138 N. Y. 543, maintains a doctrine directly contrary to the Pennsylvania case. The New York case was a proceeding by certiorari to review the action of the state comptroller in imposing a tax upon the relator, the Edison Electric Light Company, a domestic corporation, under the corporation tax act. The entire capital stock of the relator was originally invested in patent rights." (p. 701.)

The court then quotes at length, with approval, the opinion rendered by Earle, Judge.

We have thus quoted extensively from the Maryland case, because it contains an elaborate argument upon the entire question, more so than can be found in any other case, and it is a recent case. The Maryland case was appealed to this court, but dismissed by appellants. (See 20 Supreme Court Reporter, 1026.)

The supreme court of New Jersey, in the case of Storage Battery Co. v. Board, 60 N. J. L. 66, is in harmony with the Maryland case. In the New Jersey case, the company was organized with $10,000,000 capital, finally increased to $13,500,000. It had a cash value of but $2,500; the balance of its capital was traded for patents. Its entire capital stock of $10,000,000, less twenty-five shares, was traded to Gibbs & Payen for certain patents held by them. Afterwards, the $3,500,000 was issued and exchanged for other patents. The state board assessed a tax on the entire capitalization. In that case a small amount of capital was invested in the process of manufacture, and the court, after stating these facts, on page 69, used this conclusive language:

> "A small part of its capital is invested in the process of manufacture. Nearly all of its capital stock issued and outstanding was issued for the purchase of the patent rights, of which the company became the owner. These patents were granted by the United States, by Great Britain and Belgium, and the agreement with Payen, the inventor, comprehends all patents that might be issued to him for his invention throughout the world. Corporations of the class to which this company belongs are taxable

> with respect to the amount of capital stock issued and outstanding, as a fixed factor, without regard to the purpose for which the capital stock was issued, or whether issued for value or not."

In Marsden Co. v. Assessors, 61 N. J. L. 461, resistance to the tax was based upon the fact that all but $157,000 of its capital stock of $35,000,000 par value, was issued for purchase of rights under letters patent of the United States, and the claim was that such rights constitute property not taxable by the state. The court, in denying the contention, quoted with approval, from Honduras Co. v. Assessor, 25 Broom. 278:

> "The tax imposed is a franchise tax, exacted from the company as the price of the right and privilege which it received from the state of being a corporation. Although the amount to be paid is determined by the amount of the capital stock, and the duration of corporate life, yet these are only the *criteria* chosen by the legislature for ascertaining the probable value of the corporate franchise, which the company assumed. The tax is not levied upon the corporate property or business. Such a tax may be collected by the state granting the corporate franchise, no matter how the property of the company may be invested or employed, or where it may be situate."

The above cases, together with the cases cited by appellant in its brief, are all the cases we have been able to find from state courts of last resort that directly pass upon

the question here presented. There are other cases, however, where analogous questions have been presented and decided, which we believe to be controlling of the question here involved.

Before any property is exempt from taxation there must be a clear, well-defined provision of the constitution, or of some statute, or by necessary implication, that will protect it from taxation. We can find no clearer statement of this proposition than that of this court in the case of Bank of Commerce v. Tennessee, 161 U. S. 134, on page 146, Justice Peckham says:

> "These cases show the principle upon which is founded the rule that a claim for exemption from taxation must be clearly made out. Taxes being the sole means by which sovereignties can maintain their existence, any claim on the part of any one, to be exempt from the full payment of his share of taxes, on any portion of his property, must on that account be clearly defined and founded upon plain language. There must be no doubt or ambiguity in the language used, upon which the claim to the exemption is founded. It has been said that a well-founded doubt is fatal to the claim; no implication will be indulged in for the purpose of construing the language used, as giving the claim for exemption, where such claim is not founded upon the plain and clearly expressed intention of the taxing power."

The bonds and stocks of the United States are exempted by law from taxation, and yet when those bonds get into the hands of a bank or corporation, the value of the shares

of stock of such bank or corporation is taxed irrespective of the amount of United States securities held by such bank, and without regard to whether the whole or part of the capital of such bank or corporation is invested in national securities.

This question was originally decided in the case of Van Allen v. Assessors, 70 U. S. 573. Van Allen insisted that the shares of stock of the bank were not subject to taxation, because all of the capital stock was invested in United States bonds. On pages 581 and 582, this court, speaking through Mr. Justice Nelson, says:

> "The main and important question involved, and the one which has been argued at great length and with eminent ability, is whether the state possesses the power to authorize the taxation of shares of these national banks, in the hands of stockholders, whose capital is wholly invested in stocks and bonds of the United States? The court are of opinion that this power is possessed by the state, and that it is due to the several cases which have been so fully and satisfactorily argued before us at this term, as well as to the public interest involved, that the question should be finally disposed of. I shall proceed, therefore, to state, as briefly as practicable, the grounds and reasons that have led to their judgment in the case."

On page 583 the court answers the objection that a tax upon the stocks of the banks is a tax upon the bonds of the United States:

"The suggestion is that it is a tax by the state upon the bonds of the government, which constitute the capital of the bank, and which this court has heretofore decided to be illegal. But this suggestion is scarcely well founded; for were we to admit, for the sake of argument, this to be a tax of the bonds or capital stock of the bank, it is but a tax upon the new uses and new privileges conferred by the charter of the association; it is but a condition annexed to the enjoyment of this new use and new application of the bonds; * * * The tax on the shares is not a tax on the capital of the bank. The corporation is the legal owner of all the property of the bank, real and personal; and within the powers conferred upon it by the charter, and for the purposes for which it was created, can deal with the corporate property as absolutely as a private individual can deal with his own."

The right to tax the shares of a national bank at their fair cash value, irrespective of the securities of the United States government held by such bank, was reaffirmed by this court in the case of National Bank v. Commonwealth, 76 U. S. 353. In that case the entire capital stock was invested in securities of the government of the United States, and it was contended that they were not subject to taxation. On page 361 is discussed the practice of many corporations to pay the taxes charged against them for the benefit of the shareholders. In Indiana the statute requires the corporations generally to pay the taxes upon the shares of capital stock. This is for the convenience and is also for the assurance of the payment of the taxes where

the stockholders are scattered throughout the state and throughout the United States. On page 361 Justice Miller says:

> "It has been the practice of many of the states, for a long time, to require of its corporations thus to pay the tax levied on their shareholders."

This court asserts a doctrine which we have tried to emphasize, namely: That there must be some statute or some constitutional provision that prevents the states from assessing and collecting taxes upon the franchises of the government. The language used is as follows:

> "If the state can not require of the bank to pay the tax on the shares of its stock, it must be because the constitution of the United States, or some act of congress, forbids it. There is certainly no express provision of the constitution on the subject. But it is argued that the banks, being instrumentalities of the federal government, by which some of its important operations are conducted, can not be subjected to such state legislation. It is certainly true that the bank of the United States and its capital were held to be exempt from state taxation on the ground here stated, and this principle, laid down in the case of McCulloch v. The State of Maryland, has been repeatedly affirmed by the court."

On the next page (362) the court answers the argument that is made, whenever the states attempt to tax the franchises so called of the government, namely: That federal

government's instrumentalities are liable to be taxed to death and destroyed, saying:

> "The principle we are discussing has its limitation, a limitation growing out of the necessity on which the principle itself is founded. That limitation is that the agencies of the federal government are only exempted from state legislation so far as that legislation may interfere with or impair their efficiency in performing the functions by which they are designed to serve that government. Any other rule would convert a principle founded alone in the necessity of securing to the government of the United States the means of exercising its legitimate powers into an unauthorized and unjustifiable invasion of the rights of the states. * * * So of the banks. They are subject to the laws of the state, and are governed in their daily course of business far more by the laws of the state than of the nation. All their contracts are governed and construed by state laws. Their acquisition and transfer of property, their right to collect their debts, and their liability to be sued for debts, are all based on state law. It is only when the state law incapacitates the banks from discharging their duties to the government that it becomes unconstitutional."

In the case of Patterson v. Kentucky, 97 U. S. 501, the appellant was fined in the state of Kentucky for violating certain Kentucky statutes, regulating the sale of oils, the formula of which was covered by a patent. Patterson insisted that his patent protected him from prosecution. On

page 503 that insistence is met by Justice Harlan in these words:

> "It is true that letters patent, pursuing the words of the statute, do, in terms, grant to the inventor, his heirs and assigns, the exclusive right to make, use and vend to others, his invention or discovery, throughout the United States and the Territories thereof. But, obviously, this right is not granted or secured without reference to the general powers which the several states of the union unquestionably possess over their purely domestic affairs, whether of internal commerce, or of police. * * * All which they primarily secure is the exclusive right in the discovery."

On page 507 the court continues the discussion of this question:

> "The end of the statute was to encourage useful inventions and to hold forth as inducements to the inventor the exclusive use of his inventions for a limited period. The sole operation of the statute is to enable him to prevent others from using the product of his labors, except with his consent. But his own right of using is not enlarged or affected."

Railroad franchises are also granted by the United States, but because of this fact, are all the states through which the land grant railroads, or railroads whose franchises are granted directly by the federal government, to forever escape taxation on that ground? Are the stocks and bonds of the railroad company never to be assessed because the railroad is operating under federal franchises?

That question was presented to this court in the case of Railroad Company v. Peniston, 85 U. S. 5. The doctrine is there again asserted that the state may exercise to an unlimited extent the right to take property except where limited by the federal law. Speaking for this court, Mr. Justice Strong, on page 29, says:

> "That the taxing power of a state is one of its attributes of sovereignty; that it exists independently of the constitution of the United States, and underived from that instrument; and that it may be exercised to an unlimited extent upon all property, trades, business and avocations, existing or carried on within the territorial boundaries of the state, except so far as it has been surrendered to the Federal government, either expressly or by necessary implication, are propositions that have often been asserted by this court. * * * The constitution contains no express restriction of this power, other than prohibition to lay any duty of tonnage or any impost or duty upon the imports or exports, except what may be absolutely necessary for the executing of the state's inspection laws. As was said in Lane County v. Oregon, 7 Wall. 77: 'In respect to property, business and persons within their respective limits, the power of taxation of the states remained, and remains, entire, notwithstanding the constitution.'"

It may be that a tax upon stock that had been exchanged for patent rights would remotely affect the value of such patent rights, but are the states to be prohibited from taxing such shares of stock because remotely the

value of some patent right is affected? This court, on page 30, *supra*, answers this question:

> "It can not be that a State tax, which remotely affects the efficient exercise of a Federal power, is for that reason alone inhibited by the Constitution. To hold that would be to deny to the States all power to tax persons or property. Every tax levied by a state withdraws from the reach of Federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which Federal taxes may be laid."

The United States government does not have any stock or interest in the Indiana Manufacturing Company. It granted to certain individuals a patent. Those individuals exchanged those patent rights for stock in the Indiana Manufacturing Company. Why should not that stock be assessed and taxed? This court, at page 32, supra, use this pertinent language:

> "Notwithstanding this, the railroad and the telegraph line are neither in whole nor in part the property of the government. The ownership is in the complainants, a private corporation, though existing for the performance of public duties. The government owns none of its stock."

How much less interest has the government in the Indiana Manufacturing Company than it had in the railroad of its own creation and largely constructed by it? The Union Pacific Railroad Company was a great national

highway, chartered and largely constructed by and for the United States government, and yet that did not prohibit the court from charging that company with the value of such franchise. It is contended because of this governmental privilege, given to an individual, that the government must therefore prohibit states from taxing that federal privilege for fear that if not the privileges, the dignity of the United States government will be affected. This court, on page 33, supra, discusses that question as follows:

> "It may, therefore, be considered as settled that no constitutional implications prohibit a state tax upon the property of an agent of the government, merely because it is the property of such an agent. A contrary doctrine would greatly embarrass the states in the collection of their necessary revenue, without any corresponding advantage to the United States. A very large proportion of the property within the states is employed in execution of the powers of the government. It belongs to governmental agents, and it is not only used, but it is necessary for their agencies. The United States mails, troops and munitions of war are carried upon almost every railroad. Telegraph lines are employed in the National service; so are steamboats, horses, stage coaches, foundries, shipyards and multitudes of manufacturing establishments. * * * Were they exempt from liability to contribute to the revenue of the states it is manifest the state governments would be paralyzed."

Discussing the McCulloch and Osborn cases, 9 Wheat. 738, this court explains those decisions. In the former of

those cases, the tax was held unconstitutional because laid upon the notes of a bank. In the latter case the tax was held unconstitutional because it was a tax upon the existence of the bank itself.

It is true that this court, in the case of California v. Railroad Company, 127 U. S. 1, held that franchises *eo nomine* of the government can not be taxed. This court, however, in that case on page 40, defined what a franchise is, as follows:

> "A franchise is a right, privilege or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure; but should be reserved for public control and administration, either by the government directly, or by public agents, acting under such conditions and regulations as the government may impose in the public interest and for the public security."

In Central Pacific Railroad Company v. California, 162 U. S. 91, this same franchise was under consideration. Mr. Chief Justice Fuller reviews the former decisions and, on page 125, says:

> "It may be regarded as firmly settled that although corporations may be the agents of the United States, their property is not the property of the United States, but the property of the agents, and that a state may tax the property of the agents subject to the limitations pointed out in Railroad Company v. Peniston."

Telegraph franchises are taxable, and the property of telegraph companies is likewise taxable. Telegraph fran-

chises and railroad franchises are of vastly more public concern and more direct instrumentalities of the government than a patent could ever possibly be. In fact, we deny that a patent is an instrumentality of the government at all. And yet, telegraph franchises are taxable. This court, in the case of Western Union Telegraph Company v. Massachusetts, 125 U. S. 530, elaborately discuss this whole question. On page 547, the proposition is stated and argued as follows:

> "The argument is very much pressed that it is a tax on the franchise of the company, which franchise being derived from the United States by virtue of the statute above recited, can not be taxed by the state. * * * By whatever name it may be called, as described in the laws of Massachusetts, it is essentially excise on the capital of the corporation. * * * The telegraph company derived its franchise to be a corporation, and to exercise the functions of telegraphing from the state of New York. It owes its existence, its capacity to contract, its right to sue and be sued, and to exercise the business of telegraphy, to the laws of the state under which it is organized."

The court held that notwithstanding the telegraph company derived its franchise or right to string its wires along the post roads of the United States, yet that did not withdraw from the states the power of taxing the stock of the company. This proposition is more fully discussed in the case of Western Union Telegraph Company v. Taggart, 163 U. S. 1, an Indiana case. The taxes were levied by

the state board of tax commissioners. The telegraph company contended that the Indiana taxing officers had included the franchises of the telegraph company as part of the property assessed for taxation; that because such franchise was derived from the federal government, therefore the stock of the company could not be taxed for the value of such franchises. On page 18, the court, by Mr. Justice Gray, after discussing the Indiana taxing statute, covered in a single sentence the whole proposition presented in this case:

> "Those decisions clearly establish that a statute of a state requiring a telegraph company to pay a tax on its property within the state, valued at such a proportion of the whole value of its capital stock as the length of its lines within the state bears to the length of all its lines everywhere, * * * is constitutional and valid notwithstanding that nothing is in terms directed to be deducted from the valuation, either for the value of its franchises from the United States, or for the value of its real estate and machinery situated and taxed in other states."

At page 28, the court continuing, say:

> "The bill * * * nowhere undertakes to fix the value of its franchises from the United States, the state of New York and foreign countries; and the tax commissioners by the authorities already cited, had the right and the duty in estimating the value of the plaintiff's property in Indiana, to take into consideration those franchises and the other elements mentioned in this paragraph of the bill."

In Society for Savings v. Coite, 6 Wall. 594, and Provident Institution v. Massachusetts, 6 Wall. 611, the provisions of the states of Connecticut and Massachusetts, respectively, for the taxation of savings banks were attacked on the ground that they resulted directly in a tax on government bonds; but the contention was denied.

In Home Insurance Company v. New York, 134 U. S. 594, it was held that the company or domestic corporation was not permitted to deduct from the value of its property for taxation purposes the amount of its assets invested in government bonds.

In Plummer v. Coler, 178 U. S. 115, Murdock v. Ward, 178 U. S. 139, and Sherman v. United States, 178 U. S. 150, it was held that an inheritance or legacy tax might be levied, although the estate consisted largely of nontaxable government bonds.

These decisions were approved and followed in Orr v. Gilman, 183 U. S. 278.

Whatever the tax in question may be called, it is essentially an excise based upon the capital stock, as authorized and required by the statutes of Indiana, the sole effort by the authorities and the law itself was to require appellant, a manufacturing company organized under the laws of the state of Indiana, to pay taxes upon the value of its property within and protected by the state, in return for the franchises, privileges, immunities and protection had from the state.

It has been suggested in appellant's brief that a patent is a contract, and that no state shall pass any law impairing

the obligation of contracts. It is sufficient to say that no law has been passed violating any contract rights of appellant. The laws in question were in force when appellant came into existence. It accepted the terms offered by the state, and should not be heard to complain. The only contract that has been violated is the contract between the appellant and the state, wherein it agreed to pay the taxes now demanded in return for franchises, privileges and protection.

We are making no assault upon federal franchises or privileges. We make no attack upon the exclusiveness of appellant's patents. We do not discriminate against them in any manner. We are simply trying to enforce a tax which it justly owes and is unjustly trying to evade. No rights of the federal government are being infringed upon or curtailed. None of its instrumentalities are assailed.

We respectfully submit that the errors assigned are unfounded. All the pleadings are before this court. We ask that the decree of the circuit court for the District of Indiana be in all things affirmed.

Respectfully submitted,

WILLIAM L. TAYLOR,
Attorney-General of Indiana,
For Appellees.

MERRILL MOORES,
CASSIUS C. HADLEY,
Of Counsel.

2045

Supreme Court of the United States.

No. 177.—October Term, 1902.

The Indiana Manufacturing Company, Appellant, vs. Armin C. Koehne et al.	Appeal from the Circuit Court of the United States for the District of Indiana.

[February 23, 1903.]

Mr. Justice Peckham delivered the opinion of the Court.

The complainant herein has appealed from the decree of the Circuit Court of the United States for the District of Indiana, which dismissed its bill. It was a suit in equity to enjoin the collection of taxes. It appears that certain taxes had been assessed against the complainant, a corporation of Indiana, and process had issued for the collection thereof which included all the years from 1893 to 1898, (both years inclusive,) and also for the year 1900; that such taxes, or the greater part of them, were (as averred) illegal, because they were, among other things, assessed pursuant to a law of the State of Indiana, upon the value of certain letters patent of the United States, for inventions, owned by the corporation, that such State law was in violation of the Federal Constitution, and was therefore void; that the part of the taxes which complainant admitted to be legal it had paid, and notwithstanding such payment the tax officials were threatening to levy upon its property to collect the residue.

By reference to the general tax laws of Indiana of 1891 it will be seen that it is therein provided that each district assessor shall, commencing in April in each year, inquire of each person concerning his property, while as to corporations their officers are to deliver to the assessor a sworn statement of the property of such corporation in detail, and among the items to be reported is the "market value, or if no market value, then the actual value of the shares of stock" of the company. The statement made by the corporation to the assessor is by him delivered to the county auditor, who in turn delivers it to a board of review, which values and assesses the capital stock and all franchises and other property of the company. This board of review makes the original assessment. The corporation so assessed, or any taxpayer, may appeal from the assessment upon the corporation, to the State board of tax commissioners. (Section 125 of the tax law of 1891, as amended by the act of 1895, p. 79.) Upon such appeal the State board

decides as to the assessment, and may, if it decides that the property is assessable, make such an assessment, increasing or reducing it, as it may decide proper, and the auditor then certifies such changes in valuation made by the State board to the several counties, and provision is made for the collection of the same by the proper officials. By the act of 1853 (R. S. of Indiana, ed. of 1881, secs. 5813, 5814; Id. ed. of 1894, secs. 7915, 7916) provision is made that any person or corporation may appear before the board of commissioners of any county and establish by proper proof that such person or corporation has paid taxes which were wrongfully assessed against him or it, and it is thereby made the duty of the board to order the amount so proved to have been paid, to be refunded to the payer from the county treasury so far as the same was assessed and paid for county taxes. Where a portion of the amount so wrongfully assessed and paid shall have been paid for State purposes and shall have been paid into the State treasury, it is made the duty of the board to certify to the auditor of the State the amount so proved to have been wrongfully paid, and the auditor is directed to audit the same as a claim against the treasury, and the treasurer of the State is directed to pay the same out of any moneys not otherwise appropriated.

The further steps to be taken in case the authorities refuse, upon such application, to pay over the taxes wrongfully assessed, are adverted to hereafter.

The bill states that defendant Koehne is the treasurer of Marion County, where these taxes were assessed, and he is by law also the treasurer of the city of Indianapolis, and as the treasurer of the county of Marion and the city of Indianapolis he collects for them all taxes and makes distribution thereof, and also collects all taxes due the State from Marion County, and in fact he collected all taxes assessed for all purposes against appellant. There is no other treasurer of the city of Indianapolis, and the money for that city collected by tax remains in the hands of the county treasurer of the county of Marion until it is expended, the county treasurer thus retaining all taxes in his hands belonging both to the county of Marion and the city of Indianapolis until those taxes are properly expended.

Other averments were contained in the bill, but none material to the case as we view it, and upon all the facts complainant comes into a court of equity for the purpose of enjoining the collection of the alleged illegal portion of these taxes which had been imposed on the letters patent mentioned, and it was claimed by the complainants that, excluding the value of such patents, the shares had no value above the indebtedness of the corporation, and therefore it was wholly exempt or exempt with the exception of a very small sum from taxation, and that sum it had paid.

The foundation of this appeal to equity, as averred by complainant, was (1) on the ground that the assessment constitutes a cloud upon title; (2) that there is no adequate remedy at law; (3) that a multiplicity of suits is avoided; and (4) that it prevents irreparable injury to complainant.

It has long been the settled doctrine of the Federal courts that the mere illegality of a tax, or the mere fact that a law upon which the tax is founded is unconstitutional, does not entitle a party to relief by injunction against proceedings under the law, but it must appear that the party has no adequate remedy by the ordinary processes of the law, or that the case falls under some other recognized head of equity jurisdiction, such as multiplicity of suits, irreparable injury, &c. See *Cruickshank* v. *Bidwell*, (176 U. S. 73, 80,) where many of the authorities upon this subject are collected in the opinion which was delivered by Mr. Chief Justice Fuller. See also *Pittsburgh &c. Railway* v. *Board of Public Works*, (172 U. S. 32,) where Mr. Justice Gray dealt with the subject quite fully. We must judge the case at bar under the rules laid down by the authorities cited.

We take the grounds in the order above stated.

(1.) In regard to the averment that the assessment constitutes a cloud upon title.

It is the ordinary case of an assessment upon the value of the capital stock of a corporation and its franchises. Our attention has not been called to any statute which makes the assessment upon the shares a lien upon the real estate of a corporation, and if it were such lien, there is no averment that the company owned any real estate; hence, no cloud upon its title is made apparent, even if there could be a cloud cast upon the real estate merely by reason of an ordinary assessment, such as is made in this case. There is nothing in the objection.

(2.) There is the averment that the complainant is without any adequate remedy at law, and one of the grounds for such averment is stated in the bill as follows:

"And your orator further shows unto your honors that the defendant Armin C. Koehne is the treasurer of Marion County, Indiana, whose duty it is as such treasurer, under the laws of the State of Indiana, to receive and collect taxes for the said State of Indiana, and also for Marion County in said State, and also for the city of Indianapolis within said county, and also for the school board of the city of Indianapolis, Indiana. That a large proportion of the amounts received and collected by the said defendant as treasurer, as aforesaid, are for and on account of and for the benefit of the State of Indiana, a sovereign State, and one of the United States, and that under the Constitution and laws no suit can be maintained against the State of Indiana. That it is a part of the duty of the said defendant Armin C. Koehne, as aforesaid, to pay over into the treasury of the State of Indiana a large portion of the amounts so received and collected by him as taxes, and, therefore, that if said amounts are so collected and re-

ceived and paid over, they will become mixed with the moneys of the said State, and thus be beyond reach of any process of this or any court, and irrecoverable, and that great and irreparable injury will result to your orator if such unlawful collection and paying over as aforesaid be not prevented."

The averment that a portion of the tax is to be paid to the State of Indiana and that the State cannot be sued is answered by the remedy provided by the law of Indiana for such a case. Under that law the complainant was bound in the first place to appeal from the decision of the board of review, which included the letters patent, in the value of the shares of stock of the corporation. Such appeal would, by the provision of the statute, be taken to the State board of tax commissioners, and if that board affirmed the decision of the board of review the corporation could pay the tax and immediately file a petition with the board of county commissioners to recover it back under the act of 1853, above referred to. An appeal is given from the refusal of that board to repay the tax. (3 R. S. Ind. s. 7917, ed. of 1894; *Schultz* v. *Board &c.*, 20 Ind. 178; *State* v. *Board &c.*, 63 Id. 497, 501.) This appeal would be taken to the Circuit Court, and by the general law an appeal lies from that court to either the appellate court or the Supreme Court of the State, according to the amount involved.

The fact that a portion of the money raised by the tax might be for State purposes is not material under the provisions of the act of 1853, (*supra.*) The courts of Indiana have held that the filing of a petition with the board of commissioners under that act was in itself notice to the county, and if thereafter the money was paid over to the State or to the city, it was no defense; that when the board of commissioners received notice, the county became a trustee for the claimant, and in the event the money was awarded to him the county was bound to refund the same, and a payment by the county authorities after such notice, or the commencement of an action, to the State or town authorities, was at its own risk and peril. The taxpayer could not be required to pursue such funds into the hands of the parties to whom they were wrongfully distributed, and the fact that the taxes were voluntarily paid constituted no defense under the statute cited. (*DuBois* v. *Board &c.*, 10 Ind. App. 347.) It is also said in the above case that if the money had been paid over when the petition was filed, the statute provided that the commissioners should give the claimant a certificate to the State auditor for the repayment by the State treasurer, when taxes had been paid that were wrongfully assessed for State purposes. There was nothing, therefore, to prevent the complainant herein from paying the tax and immediately filing its petition with the board of county commissioners to have it refunded, and the payment to

the State (if made) was immaterial and constituted no defense. The tax could be recovered back notwithstanding the payment to the State.

It has been urged, however, that the act of 1853 was not broad enough, inasmuch as it required that the taxes should have been wrongfully assessed and that mere illegality would not be sufficient in order to recover under the statute, citing *Commissioners &c.* v. *Armstrong*, (91 Ind. 528.) That case simply held that where property was legally taxable and the tax assessed was justly and equitably due, if through some irregularity or default it had not been legally assessed, it could not be said to have been "wrongfully" assessed within the meaning of the statute of 1853 and recoverable back under that statute; but that very case shows that if property which was not taxable was assessed and the money paid, such assessment was "wrongful" within the statute of 1853, being made upon property not liable to taxation, and therefore it could not be said that any tax so assessed was justly or equitably due.

In this case, if the complainant be right in its averment that the letters patent owned by it are property exempt from taxation by or under State authority, then such property is "wrongfully" assessed within that statute, and proceedings could be taken to recover back the tax so paid, upon complying with the provisions of the law of Indiana. (*Donch* v. *Board of Commissioners*, 4 Ind. App. 374, decided in 1891, subsequently to the decision in 91 Ind. *supra*; *DuBois* v. *Board &c.*, 4 Id. 138, and again reported, reaffirming the same doctrine, in 10 Id. 374; *Newsom* v. *Board &c.*, 92 Ind. 229; *Board &c.* v. *Senn*, 117 Id. 410.)

Complainant could set forth in its petition to the county commissioners its claim under the Federal Constitution for the exemption of the letters patent owned by it from taxation, and it could make the same claim if the board refused to admit it, in its action in the Circuit Court and on an appeal from an adverse decision in that court to either the appellate court or the Supreme Court of the State, and if either court to which the appeal was taken and before which the question was raised decided it adversely to the complainant, a writ of error would lie from this court and the subject could be reviewed and finally decided here. There is no doubt, therefore, of the adequacy of the remedy at law, provided the act of 1853 is in force.

It is argued that the act of 1853 is repealed by the general tax act of 1891 under which these assessments were made.

There is no specific repeal of the statute contained in the general tax act, and repeals by implication are concededly not favored. It would have to appear that the two acts were inconsistent with each other, or that the act of 1891 was a complete system in itself, and was really meant to cover the cases, and the method of recovery which was to be pursued, in matters of wrongful taxation, and to exclude all remedy except such as that act provided. This, we think, cannot be maintained.

And again, the act is contained in the edition of the Revised Statutes of Indiana, of the revision of 1894, by Burns, and is reproduced therein as sections 7915 and 7916, and it is not stated in that edition that there had been any claim that those sections, constituting the act of 1853, had ever been repealed, but on the contrary the act is treated as a valid and subsisting part of the Revised Statutes of the State. The sections are also cited in *Donch* v. *Board &c.*, (*supra*,) as sections 5813 and 5814 of the edition of the Revised Statutes of 1881, and there is no remark in that case that they had since been repealed by the act of 1891. See also *DuBois* v. *Board &c.*, (4 Ind. *supra.*) True, the questions discussed in these cases arose prior to the passage of the general tax act of 1891, but these decisions were made subsequently to the passage of that act, and the sections were not referred to in any of those opinions as if they had been repealed by the general tax act and were only applicable to cases happening before the passage of that act.

We see nothing in *Hart* v. *Smith*, recently decided by the Supreme Court of Indiana and reported in 64 N. E. Rep. 661, to support the claim of the repeal of the act of 1853. It was there held that, upon the mere matter of a valuation of the shares of the stock, the decision of the State board of tax commissioners was not reviewable by the court. Upon which counsel argues that, "if we could go before the county commissioners with a claim after the State board had passed upon it, then inevitably we could also go to the Circuit Court of Marion County, and thence to the appellate or Supreme Court of the State, according to the amount involved. Therefore, if the Supreme Court 'has no power to review' the decisions of the State board of tax commissioners, then the county commissioners have no power to begin a course of proceedings which must inevitably, at its conclusion, come to a tribunal which has declared that it 'has no power to review,'" and it is therefore urged that if the court has no power to review this determination of the tax commissioners, it is because the act of 1853 has been repealed. But the decision of the tax commissioners upon a mere question of judgment as to the value of shares of stock is a decision of a question of fact upon which the judgment of the board would be final, even if the act of 1853 were not repealed. In that very case, however, the court did review a decision of the board as to valuation when it appeared that, in arriving at such decision, the board included property, as part of the value of the shares, which the law did not permit to be taxed, and an assessment for valuation thus arrived at was held illegal, and as it could not be determined how much of the total assessment depended upon the valuation of the property not taxable, the court held the whole assessment illegal, and gave judgment accordingly. We are not convinced that the act of 1853 has been repealed, and the remedy thereby provided being sufficient, we hold complainant had an adequate remedy at law.

(3.) The further ground of jurisdiction in equity, that it prevents a multiplicity of suits, cannot be sustained.

The remedy provided by the State of Indiana is in truth but one proceeding, and all the complainant had to do in order to avail itself of such remedy was to appear before the board of review when the assessment was first made and object to it, and if its objections were overruled, then to appeal to the State board, and if that board also overruled the objection, then to pay the tax. The proceeding thereafter is one suit commenced by application to the board of county commissioners to recover the tax wrongfully assessed, and if the claim were refused, then the party might go into the Circuit Conrt, and if refused again, it had the further right of appeal, and if still refused, it then had the right of review by writ of error from this court, if any Federal question had been decided against it. The right to come into a Federal court and invoke its equitable jurisdiction in order to avoid the remedy thus provided by the State cannot, under these facts, be founded upon the alleged prevention of a multiplicity of suits. The claim on such ground is without foundation.

(4.) Nor is there any irreparable injury as averred.

There is a general averment that to enforce the tax by distraint and sale of complainant's property would result in irreparable injury, but there is no fact stated from which it could be inferred that irreparable injury would be likely to result from such enforcement, and where a plain and adequate remedy to recover the amount is given by statute no such irreparable injury can be inferred. Some averment of specific facts must be made from which the court can see that irreparable injury would be a natural and probable result. Nothing of the sort is shown here. Indeed, the averment of irreparable injury seems to be founded upon the other averment, that if the tax got into its treasury the State could not be sued to recover it back, and hence the necessity of appealing to equity. But the answer to that has already been given by referring to the act of 1853, which fully provides for such contingency.

The claim is also made that complainant had the right under section 1 of the act of 1888, (25 Stat. 433, chap. 866,) amending the act of 1875, to resort to the Federal court on the ground that the case arose under the Constitution or laws of the United States, inasmuch as it was claimed that under such Constitution the letters patent were not taxable by or under State authority. But the right to resort to a Federal court as a court of equity must be founded upon some ground of equitable jurisdiction recognized by the Federal courts, and when, as here, no such ground appears, jurisdiction in equity cannot be maintained.

Whether the value of letters patent is in any way taxable by or under State authority, we have no occasion to now decide, because the question is

not before us. We simply show a plain and adequate remedy at law, after paying the tax, to recover it back, in an action or proceeding where the question as to the exemption of this kind of property from taxation can be raised, and if not admitted by the State court, it can be reviewed here on writ of error.

We see no ground for interfering with the judgment of the court below, and it is, therefore,

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.